ORDINANCE 49
LAW & ORDER CODE

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TITLE I
Tribal Court

1.1 ESTABLISHMENT OF COURT

There is hereby established for the Tulalip Reservation in Washington a court to be known as the Tulalip Tribal Court, hereafter referred to as the Tribal Court.

1.2

1.2.1 The jurisdiction of the Tulalip Tribal Courts shall extend, except as limited by federal or Tulalip tribal law, to (a) all persons natural and legal of any kind and to (b) all subject matters which, now and in the future, are permitted to be within the jurisdiction of any tribal court of a sovereign Indian tribe or nation recognized by the United States of America; and tribal territorial jurisdiction shall extend, except as limited by federal law or Tulalip tribal law, to all lands and waters , in trust or fee, within the Tulalip Indian Reservation and outside the Tulalip Reservation to lands and waters reserved or obtained by the Tribes and its people for their use by any treaty or law or in any other manner, including, but not limited to, court decision, purchase, established right of use, or gift.

The Courts of the Tulalip Tribes shall have jurisdiction to hear and decide all causes of action arising from activities within the boundaries of the Consolidated Borough of Quil Ceda Village and shall hear and decide all matters arising under the duly adopted ordinances and regulations of the Consolidated Borough of Quil Ceda Village.

1.2.2 The Tulalip Tribes, its Board of Directors, its agencies, enterprises, chartered organizations, corporations, or entities of any kind, and its officers, employees, agents, contractors, and attorneys, in the performance of their duties, shall be immune from suit; except where the immunity of the Tribes or its officers and employees is expressly, specifically and unequivocally waived by and in a Tulalip tribal or federal statute, a duly executed contract approved by the Tulalip Board of Directors, or a duly enacted ordinance or resolution of the Tulalip Board of Directors.

1.2.3 The Tulalip Tribal Courts shall apply the laws and ordinances of the Tulalip Tribes, including the custom laws of the Tribes, to all matters coming before the Courts; provided, that where no applicable Tulalip tribal law, ordinance, or custom law can be found, the Courts may utilize, in the following order, the procedural laws of other federally recognized Indian Tribes, federal statues, federal common law, state common law, and state statutes as guides to decisions of the Courts.

In all actions, and as to all claims or defenses, which concern or are based upon any contract, lease, lease assignment, loan agreement, credit agreement, a promissory note, assignment of rents, assignment of rental income, assignment of income or revenue, mortgage, deed of trust, any other agreement assigning, pledging or encumbering any collateral as security, or any other agreement or instrument, which contains a choice of law clause or provision that specifies or selects the governing law, the Tulalip Tribal Courts shall apply the governing law so specified or selected.

1.2.4 Long-Arm Jurisdiction: It has been and continues to be the intent of the Board that the tribal court exercise long-arm jurisdiction to the extent consistent with the due process protections provided by 25 USC § 1302(8) and the limitations set forth in section 1.2.3 Unless prohibited by federal law or beyond the limitations of 1.2.3, a person, including any entity, who is a non-member of the Tribe residing outside the Tribe's territorial jurisdiction and/or not present within such territory, submits to the jurisdiction of the tribal court by doing any of the following acts:

a. Transacting any business within tribal territory including but not limited to construct to supply services or tangible items within the reservation or off-Reservation trust lands and conveying any interest in property located within such tribal territory;
b. Committing any tortuous act within the Reservation or other tribal territory
c. Owning, using, possessing or having an interest in any property, whether real or personal, situated within tribal territory.
d. Contracting to insure any person, property or risk located within the Reservation or other tribal territory at the time of contracting;
e. Living in a marital relationship subject to the Tribe's jurisdiction, notwithstanding subsequent

department from tribal territory, so long as one party to the marriage continues to reside within tribal territory.

f. Is the parent, custodian, or other person with a legal interest in an Indian child subject to the jurisdiction of the Tribe.

g. Accepting a privilege from the Tribe, or entering a consensual relationship or commercial transaction with a member, relating to the exercise of tribal fishing or hunting rights.

Where jurisdiction is based on an act listed in this section, the court may exercise personal jurisdiction over the person who does such act, directly or by an agent, as to any cause of action under tribal law arising from such act. If an individual, the court's jurisdiction over the person also extends to his or her personal representative.

1.3 APPOINTMENT AND REMOVAL OF JUDGES

1.3.1 Judges:

a. The Tulalip Tribal Court shall consist of at least three judges, who shall be called the judicial officers.

b. The judges shall be a judge from any federally recognized Indian Tribe, lawyer licensed to practice before the Washington, State Bar Association, or any other qualified person appointed by the Tribal Board of Directors, or Commissioner from any Court of Indian Offenses whose duties are regular and permanent in that court.

c. A judge may sit as judge in all tribal matters wherein issues of fact or law are contested in the Tulalip Tribal Court and shall be compensated on a per diem basis therefore.

d. A judge shall also be compensated for all travel, food, and lodging associated with his duties as trial judge at the Tulalip Indian Reservation.

e. The Judge shall hold office for a term of four years, from the date of their appointment unless sooner removed for cause or by reason of abolition of said office, but shall be eligible for reappointment. The Board of Directors may annually designate a Judge to hold the office of Chief Judge and assign to same as it deems fit authority over court administrative matters.

f. The Judges shall be appointed by the Tulalip Board of Directors, subject to the acceptance of the position by the judge so appointed, which acceptance of the position by the judge so appointed, shall be evidenced by talking and signing the oath of office attached hereto as Form 13.

g. The judges and/or judicial officers of the Tulalip Tribal Court shall have regular and permanent duties, as fixed and determined by the Board of Directors

h. The judges and/or judicial officers shall have the authority to act in all matters within the jurisdiction of the Tulalip Tribal Court. In addition, but not in limitation, such ones shall have authority to determine the amount of or deny bail; to permit any person charged with an offense pursuant to this code to be released on his own recognizance; to conduct arraignments; to establishment dates for trials, hearings, and other proceedings; to determine the sentence of any person pleading or found guilty of an offense pursuant to this code; to administer the general business of The Tulalip Tribal Court; and to act as a judge pro tem in contested cases if the Chief Judge is disqualified or for any reason declines to preside.

I. Any act or omission which would result in ineligibility for appointments shall be cause for removal of a judge already appointed and his removal shall be effective upon notice such fact to the appointing authority.

j. In the event all the judges of the Tribal Court disqualified or unable to hear a case, a judge secured from another tribal court or any recognized inter-tribal court system shall sit as judge pro-tem of the Tulalip Tribal Court.

k. No judge shall be qualified to act as such in any case where he has any direct interest or wherein any relative by marriage or blood, in the first or second degrees, is a party.

1.3.2 Court Magistrate: The Board of Directors of the Tulalip Tribes may appoint a Court Magistrate for the Tulalip Tribal Court. The qualifications, eligibility, compensation, term and oath of office and conditions of removal shall be the same as that for tribal judge. The Court Magistrate shall not have the power, authority and jurisdiction in any matter wherein issues of fact or law are contested, but shall have the power, authority and jurisdiction, concurrent with the Tribal court, and the judges thereof, in the following particulars:

a. To grant and enter defaults and enter judgment thereon.

b. To issue ex party temporary restraining orders and temporary injunctions and to fix and approve bonds hereon.

c. To hear and determine all proceedings supplemental to execution.
d. To heat and determine ex party and uncontested civil matters of any nature.
e. To grant adjournments, administer oaths, preserve order, compel attendance of witnesses and to punish for contempt's in the refusal to obey or the neglect of his lawful orders made in any matter physically before his as fully as the judge of the Tribal court.
f. Hold arraignments, receive pleas there at, and sentence in the instance of a guilty plea.
g. Issue warrants and subpoenas.

Whenever this Ordinance sets forth the procedures and substance governing any of the above powers, authority and jurisdiction of the Tribal judges and Tribal court, the same shall apply equally to the Court Magistrate; provided, however it shall not serve to increase the power, authority and/or jurisdiction of the Court Magistrate.

1.4 ELIGIBILITY. To be eligible to serve as judge of the Tribal court, a person must:
1. be over 21 years of age;
2. never have been convicted or found guilty of a felony in any federal or state court or within one year last past, of a misdemeanor in any tribal, federal or state court, or offense under any tribal Ordinance involving moral turpitude;
3. be of high moral character and mentally and physically sound; and
4. be a resident of the State of Washington at the time of appointment.

1.5 REMOVAL OF JUDGES. During the tenure in office, Judges may be suspended, dismissed or removed for cause by the Board of Directors. Copies of a written statement setting forth the facts and the reasons for such proposed action must be delivered to the judge and to members of the Board of Directors at least ten (10) days before the meeting of the Board of Directors before which he is to appear. A public hearing shall then be held by the Board of Directors wherein the accused judge shall be given an adequate opportunity to answer any and all charges. Causes judged sufficient for removal shall include, by way of example and not limitation: excessive use of intoxicants or drugs, immoral behavior, conviction of any offense other than minor traffic violations, use of official position for personal gain, desertion of office, failure to perform duties, or conduct contrary to the American Bar Association Code of Judicial Conduct, which code is incorporated herein by reference as though set forth in full. The decision of the Board of Directors shall be final.

1.6 RULES OF COURT - PROCEDURES.

1.6.1 The Time and place of court sessions and all other details of judicial procedures not prescribed by the regulations and rules contained in this Code shall be governed by the rules of court promulgated as herein provided. The judges, by majority vote, are hereby empowered to recommend adoption of new and additional rules; each of which shall become effective upon approval by the Tribal Services Committee. Said Committee shall submit the same forthwith for ratification, revision or rejection to the Board of Directors. Failure of said Board to act within sixty (60) days of submittal shall constitute and be equivalent to its ratification of the Tribal Service Committee's approval rule.

1.6.2 In the event of the failure of any submittal by the judges of recommended court rules, rules of procedures of the North west Inter-Tribal Court System, if any, are hereby adopted by reference as they now exist or may hereafter be amended.

1.7 DISQUALIFICATION OF JUDGE. A defendant, or other party, to any legal proceedings may accomplish one change of assignment of his case from one judge to another upon filing an affidavit of prejudice with the court, stating that the judge assigned to the case is prejudiced against their case. Such affidavit shall be in written form and must be filed with the court before any trial action whatever has been by the initial judge. The second judge shall pass on the adequacy of any further affidavits of prejudice and enter the appropriate order, either hearing the case or reassigning it to another judge or judge pro team.

1.8 JURIES.

1.8.1 Selection of Jurors. A list of eligible jurors shall be prepared by the Court. The eligible juror list shall be updated from time to time but no less than once in each year. The Court shall provide for the selection of names of persons eligible for service as jurors.

Jurors shall be eighteen years of age or older and, notwithstanding any other law of the Tulalip Tribes or any of its agencies, shall be chosen from the following classes of persons:

1. Tribal members living on or near the Tulalip Indian Reservation; and
2. Residents of the Tulalip Indian Reservation; and
3. Employees of the Tulalip Tribes or any of its enterprises, agencies, subdivisions, or instrumentalities who have been employed by the Tribes for at least one continuous year prior to being called as a juror.

A person may be excused from serving on a jury upon good cause shown under oath to a judge. Jurors whose employers provide for compensated leave for serving on juries shall not be excused by the Court from serving on a jury because of work related responsibilities except under extraordinary circumstances.

The Court shall consider the needs of the Court to maintain an adequate jury pool and compensated employment leave for participating in a jury pool, prior to allowing jurors to be excused for employment reasons. Members of the Tulalip Board of Directors shall be exempt from serving on juries during their terms of office.

1.8.2 Fees: Every person who is required to attend court for selection or service as a juror shall be entitled to fees and mileage per diem as set by resolution of the Tulalip Board of Directors.

1.8.3 Juror Conflict of Interest: No person shall be qualified to sit on a jury panel in the Tribal Court in any case where that person has a direct interest or wherein any relative, by marriage or blood, in the first or second degree, is a party; nor shall any party be required to use a challenge without cause to remove a person not qualified to serve as a juror under this section. This section shall not be construed as the sole cause upon which a juror may be challenged for cause, and other conflict of interest shall be considered by the judge.

1.8.4 Emergency Additions — Jury Pool: In situations where there is a shortage of jurors the Court may call upon tribal employees from any agency, enterprise, division or subdivision of the Tribes to serve as prospective jurors without giving an advance notice.

1.9 SUBPOENAS / WITNESSES.

1.9.1 Subpoenas: A judge of the Tribal Court shall issue subpoenas for the attendance of witnesses, and the production of documents, either on his own motion or on request of the Tribal police or any of the parties to the case which a subpoena shall bear the signature of the judge issuing it. Subpoenas under this section may be issued for purposes of discovery, for pretrial hearing, or for a trial or post trial proceeding.

1.9.2 Witness Fees: Each witness answering such subpoena or appearing voluntarily shall be entitled to fees and mileage as set by resolution of the Tulalip Board of Directors.

1.9.3 Service of subpoenas: Service of subpoena shall be made by a tribal police officer or other person appointed by the court for such purposes, or by a competent person who is at least 18 years of age and not a party to the action. Proof of service of subpoena shall be filed with the Clerk of Court by noting on the subpoena the return date, time and place that it was served.

1.9.4 Effect of failure to obey a subpoena. If a witness fails to obey a subpoena, an order to show cause why the person should not be found in contempt of Court shall immediately issue. In criminal cases, a bench warrant for arrest may be issued pursuant to 2.8.11

1.9.5 Privileged confidentiality in certain relations. There are particular relations in which it is the policy of the law to encourage confidence and to preserve it inviolate; therefore, a person cannot be examined as a witness in the following enumerated cases:

a. Spousal privilege. A husband cannot be examined for or against his wife without her consent or a wife for or against her husband without his consent; nor can either, during the marriage or afterward, be, without the consent of the other, examined as to any communication made by one to the other during the marriage; but this exception does not apply to a civil action or proceeding

by one against the other or to a criminal action or proceeding for a crime committed by one against the other; and further does not apply to a criminal action for a crime committed by said husband or wife against any child of whom said husband or wife is the parent or guardian.

b. Attorney-client privilege. (1) An attorney or Court advocate cannot, without the consent of his client, be examined as to any communication made by the client to him or his advice given to the client in the course of professional employment. (2) A client cannot, except voluntarily, be examined as to any communication made by him to his attorney or Court advocate or the advice given to him by his attorney or Court advocate in the course of the attorney's or Court advocate's professional employment.

c. Confessions made to member of clergy. A clergyman, priest, or traditional spiritual advisor, cannot, without the consent of the person making the confession, be examined as to any confession made to him in his professional character in the course of discipline enjoined by the church or religion to which he belongs.

d. Doctor-patient privilege. Except as provided in Rule 35, Federal Rules of Civil Procedure, a licensed physician, surgeon, or dentist cannot, without the consent of his patient, be examined in a civil action as to any information acquired in attending the patient which was necessary to enable him to prescribe or act for the patient. This Privilege shall not apply in the following situations:

A. In any judicial proceedings regarding a child's injury, neglect, or sexual abuse or the cause thereof; and

B. Ninety days after filing an action for personal injuries or wrongful death, the claimant shall be deemed to have waived the physician-patient privilege. Waiver of the physician-patient privilege for any one physician or condition constitutes a waiver of the privilege as to all physicians or conditions, subject to such limitations as the court may impose.

e. Psychologist-client privilege. The confidential relations and communications between a psychologist and his client shall be placed on the same basis as provided by law for those between an attorney and his client.

f. Information gathered by psychology teachers and observers. Any person who is engaged in teaching psychology in any school or who, acting as such, is engaged in the study and observation of child mentality shall not, without the consent of the parent or guardian of such child being so taught or observed, testify in any civil action as to any information so obtained.

g. Licensed Social Workers. A licensee may not disclose any information acquired from clients consulting in the licensee's professional capacity except:

(A) with the written consent of the client or, in the case of the client's death or mental incapacity, with the written consent of the client's personal representative or guardian;

(B) that he need not treat as confidential a communication otherwise confidential that reveals the contemplation of a crime by the client or any other person or that in his professional opinion reveals a threat of imminent harm to the client or others;

C) that if the client is a minor and information acquired by the licensee indicates that the client was the victim of a crime, the licensee may be required to testify fully in relation thereto in any investigation, trial, or other legal proceeding in which the commission of such crime is the subject of inquiry;

(D) that if the client or his personal representative or guardian brings an action against a licensee for a claim arising out of the social worker-client relationship, the client is considered to have waived any privilege;

(E) to the extent that the privilege is otherwise waived by the client; and

(F) as may otherwise be required by law.

h. Interpreters. Any information that an interpreter gathers pertaining to any proceeding then pending shall at all times remain confidential and privileged, on an equal basis with the attorney-client privilege, unless such person desires that such information be communicated to other persons.

I. Investigative Reports and Investigators – Tulalip Board of Directors. An investigator employed by the Tulalip Tribes cannot be examined in any civil cause before the Courts of the Tulalip Tribes regarding an investigation performed at the request of the Tulalip Board of Directors without the formal consent in writing of the Tulalip Board of Directors to such examination. No written report produced as a part of an investigation performed at the request of the Tulalip Board of Directors may be utilized as evidence in any civil case before the Courts of the Tulalip Tribes without formal written consent of the Board of Directors.

1.9.6 Child Abuse Reporting/Proceedings. None of the privileges contained in Sec. 1.9.5 shall apply to the extent reporting or testimony is required by any law related to the mandatory reporting of child abuse or neglect. All persons acting in good faith to report child abuse and who provide testimony directly related to child abuse or neglect in judicial proceedings shall be immune from liability for reporting and/or testifying in good faith.

1.10 COUNSEL.

1.10.1 Counsel Appearing in Tribal Court: Any person appearing as a party in Tribal court shall have the right to counsel at his or her own expense. The court or Tulalip tribal administration may appoint counsel to assist any person appearing as a criminal defendant in the court when the person is determined, after investigation by the court, to be indigent based upon the standards of indigency established by the Court with the approval of the Tulalip Board of Directors. Appointed counsel may be: (1) an attorney admitted to practice before any state bar, or (2) a student at, or graduate of any school of law accredited by the American Bar Association, or (3) lay counsel admitted to practice in the Tribal Courts appointed by the Tribes. The Tribes shall not be obligated to pay for appointed counsel except in the circumstance where the Tribes enacts a budget for such appointed counsel and defines the basis upon which counsel shall be compensated.

1.10.2 The Tulalip Tribal Court, with the approval of the Tulalip Board of Directors, may adopt such rules as it deems necessary and appropriate for the licensing of members to the bar of the Tulalip Tribal Court.

1.10.3 Persons appearing in Tribal Court also have the right to lay counsel, at his or her own expense, which counsel shall be of their own choosing and need not be an attorney or admitted to practice before the bar of any state.

1.11 APPELLATE PROCEEDINGS.

1.11.1 Rights of Appeal: Any person who claims, in good faith, that the Tulalip Tribal Court made a mistake in interpreting the law or a mistake in procedure which affected the outcome. The Tribe, however, may not appeal a jury of not guilty.

1.11.2 Notice of Appeal:

a. Any person who wishes to appeal the judgment or appealable order of the Tribal Court shall, within twenty (20) days after the judgment is final or entry of the appealable order, (1) file a notice of appeal with the clerk in writing, and (2) serve each party of record with a copy of the notice of appeal. If a party first asks for a new trial, rehearing, or reconsideration and the motion is denied the twenty-day time limit shall be counted from the day when the motion is denied.

b. The notice of appeal must: (1) specify the party or parties taking the appeal; and (2) designate the judgment, order, or part thereof being appealed. The party filing the appeal should attach to the notice of appeal the written order or judgment from which the appeal is made. The party filing the notice of appeal shall also file with the clerk a copy of proof of service on all parties. Service of the notice of appeal may be made by personal service or certified mail with return receipt.

1.11.3 Stay of Judgment Pending Appeal:

a. When a party appeals the judgment of the trial court, the judgment shall not be carried out until and unless the appeals court upholds the judgment. Injunctions, however, shall take effect unless the trial judge suspends them.

b. Upon receipt of a notice of appeal and after the trial judge gives the parties an opportunity to be heard, the judge may set terms and conditions governing the release of a person convicted of a crime, the disposition of property which has been used as evidence or is the subject of the judgment, and other matters necessary to preserve the court's jurisdiction while the appeal is being considered.

1.11.4 Bonds: The trial judge may require the party who appeals a judgment to deposit cash or other security with the court while the appeal is being processed if there is a clear showing that some security is needed to guarantee that the court's judgment will be enforceable later. The security required shall not be greater in value than the amount of the judgment of fine imposed by the trial court, plus costs.

1.11.5 Record on Appeal:

a. The record on appeal shall be made up of all papers filed in a case plus the tape recording and /or transcript made of all court hearings in the case.

b. Upon receipt of a notice of appeal, the clerk shall make sure that the case record is complete and in order and shall make the record available to all parties for inspection and for copying at the parties' expense.

1.11.6 Appeal Judges:

a. Justices and Justices Pro Tem of the Tulalip Court of Appeals shall be appointed and sworn into office by the Tulalip Board of Directors and shall serve four year terms from the date of appointment.

b. The Board of Directors may appoint a Presiding Justice of the Court of Appeals. When no Presiding Justice has been appointed by the Board of Directors the Presiding Justice of the Court of Appeals shall be elected by the majority vote of all regular sitting Tulalip appellate justices.

c. For each matter placed before the Court of Appeals by appeal or otherwise, a panel of three justices shall be selected by the Presiding Justice to hear and decide the issues or issues before the Court of Appeals.

d. Administrative matters placed before the Court of Appeals may be disposed of by a single regular Justice of the Court of Appeals where a rule, adopted by the Appellate Court and approved by the Tulalip Board of Directors, so provides.

e. The Appellate Justice with the longest experience as a tribal court judge at any level shall be designated the Chief Justice of any single panel of three justices.

1.11.7 Sending the Record to Appeal Judges:

a. At the same time as the clerk sends or gives a copy of the notice of appeal to the parties, the clerk shall also send a copy to each of the three chosen to sit on the appeal panel.

b. No longer than ten (10) days after the notice of appeal is delivered to the appeal judges, the clerk shall deliver a copy of the case record to each of the three judges.

1.11.8 Scheduling:

a. After consulting with the two associate judges and the court clerk, the senior judge of the appeal panel shall schedule a hearing at which the parties' arguments on appeal will be considered. The hearing shall be scheduled no fewer than thirty (30) days and no more than ninety (90) days after judge receive the notice of appeal.

b. The clerk shall immediately notify all parties of the time and place of the hearing on appeal.

1.11.9 Brief: The parties may, but shall not be required to, make their arguments on appeal in writing. If the party who appeals wishes to submit written arguments, he or she shall tell the clerk within ten (10) days after appealing. The judge shall then notify all parties of a schedule for the filing of written arguments. The schedule shall require the party appealing to file arguments. The schedule shall require the party appealing to file written arguments first, giving both sides equal time to prepare their arguments and leaving at least ten (10) days between the deadline for submitted the last arguments and the scheduled court hearing.

1.11.10 Additional Evidence: Cases appealed pursuant to there rules shall be decided on the basis of the trial court record and any written or oral arguments presented by the parties. The appeal judges shall allow the parties to present additional evidence at or before the hearing if refusal to consider the evidence would result in a clear injustice.

1.11.11 Motions:

a. A party who wishes to raise a question of procedures or request court action during an appeal shall present the issue to the judge in a written motion which the party files with a clerk. The clerk may help any party put a motion in writing.

b. The party who makes a motion pursuant to this rule shall give or send a copy of the motion to all

parties on the same day as the motion is filed with the clerk. Other parties may respond to the motion within five days after receiving a copy.

c. The clerk shall immediately send a copy of a motion made pursuant to this rule to the chief appeals judge who may rule on the motion alone or after consulting with the associate judges.

1.11.12 Dismissal of an Appeal:

a. On the request of the appealing party, an appeal shall be dismissed at any time up to submission of respondent's written arguments or five (5) days before the scheduled hearing, whichever is sooner. The court shall order the appealing party to pay all costs of a dismissed appeal.

b. If the appealing party requests that the appeal be dismissed after the deadline set in Section 1.11.12(a) of this rule, the judges may dismiss the appeal. Subject to the condition the appealing party pay costs, if the dismissal will not prejudice any other party.

c. If the judges determine that an appeal was filed frivolously and without good faith, they shall dismiss the appeal and charge all costs to appellant.

1.11.13 Hearing: At the time set for hearing on appeal, the parties may present orally any arguments relevant to the issues raised by the appeal. The party who appealed shall speak first and shall have a chance later to respond briefly to any remarks made by the other parties. The judges may set limit on the time each party is allowed to speak.

1.11.14 Judgment:

a. The judges shall announce their decision of an appeal after discussing the case with each other. The decision on appeal may be made by a majority vote of the judges.

b. The appeals judges shall put their decisions in writing and have a copy of the decision delivered to all parties.

c. The appeals court may dismiss an appeal, reverse the trial court decision in whole or in part, order a new trial, or make and other ruling which disposes of the issues raised by the appeal.

1.11.15 Costs: The appeals judges shall order the party who loses the appeal to pay costs, unless it appears that such an order would result in a clear injustice.

1.12 CLERK AND RECORDS.

1.12.1 Clerk: The Board of Directors shall appoint a clerk of the court. The clerk of the court shall be under the supervision of the Judicial Officer. The clerk shall render assistance to the court, to the police force of complaints, subpoenas, warrants, and commitments and any other documents incidental to the lawful function of the court. It shall be the further duty of the clerk to attend and to keep a written record of all proceedings of the court, to administer oaths to witnesses, to receipt and disburse all fees, fines, and charges, and to perform such other duties as the Chief Judge and Judicial Officer shall designate. The Clerk, before entering upon his duties, shall be covered by the blanket bond provided for all tribal employees. The clerk shall receive such compensation as set by resolution of the Tulalip Board of Directors.

1.13 PROSECUTING ATTORNEY.

1.13.1 Appointment: The Board of Directors shall appoint person to act as prosecuting attorney. Such one shall be over 25 years of age, of good moral character, and without previous convictions for crimes. He shall be paid at a rate per resolution established same by the Tulalip Board of Directors. His duties shall be to prosecute all persons against whom a complaint of an offense under this Ordinance has been filed. He shall see that all judgments and sentences of the Court and procedural requirements of this Ordinance are met and complied with.

1.14 COSTS.

1.14.1 Fixing and Collection of Costs: Upon conviction of any offense under this code, the judgment and sentence of the tribal court and the appellate court shall carry and assess costs against the defendant unless the same are expressly modified, reduced, or excluded by the court. Such costs shall be payable to the Clerk and shall constitute an obligation to pay as if the same were a civil debt owed to the Tulalip Tribes of Washington. Such costs shall include the remuneration paid by the Tulalip Tribes to the Judge, Clerk, and Prosecution Attorney, plus witness fees and costs of service of court papers.

1.15
[Section 1.15.1 "**Criminal Statute of Limitations**" has been repealed].

1.15.2 Civil Statute of Limitations: No complaint shall be filed alleging a civil cause of action unless the civil cause of action arose and/or accrued within six years prior to the date of the filing of the complaint in a matter involving the breach of a written contract and in all other matters within three years (3) years, unless otherwise specified in a particular ordinance. This general statute of limitations shall not apply to suits filed by the Tulalip Tribes to recover public moneys or public property intentionally misspent, misappropriated or misused, and further this general statute of limitations shall not apply to any debt owed the Tulalip Tribes or any of its agencies, arms or instrumentalities.

1.16 [REPEALED].

1.17 WRIT OF HABEAS CORPUS.

1. **Availability of writ.**
   a. Except as provided in subsection (1)(b), every person within the jurisdiction of the Tulalip Tribes imprisoned or otherwise restrained of liberty may prosecute a writ of habeas corpus to inquire into the cause of imprisonment or restraint and, if illegal, to be delivered from imprisonment or restraint.
   b. The writ of habeas corpus is not available to attack the validity of the conviction or sentence of a person who has been adjudged guilty of an offense by a court of competent jurisdiction and has exhausted the remedy of appeal, nor is it available to attack the legality of an order revoking a suspended or deferred sentence. Moreover, a person may not be released on a writ of habeas corpus due to any technical defect in commitment not affecting the person's substantial rights.
   c. When a person is imprisoned or detained in custody by the Tribes on any criminal charge for want of bail, such person is entitled to a writ of habeas corpus for the purpose of giving bail upon averring that fact in his petition, without alleging that he is illegally confined.

2. **Issuance of writ.**
   a. Application for a writ of habeas corpus is made by petition signed either by the party for whose relief it is intended or be some person on the petitioner's behalf. It must specify:
      I. that the petitioner is unlawfully imprisoned or restrained of liberty;
      ii. why the imprisonment or restraint is unlawful; and
      iii. where or by whom the petitioner is confined or restrained.
   b. All parties must be named if they are known or otherwise described so that they may be identified.
   c. The petition must be verified by the oath or affirmation of the party making the application.
3. **Granting of the writ.** Any Justice of the Court of Appeals may grant a writ of habeas corpus upon petition by or on behalf of any person restrained of liberty within the Justice's jurisdiction. If it appears to such Justice that a writ ought to issue, it shall be granted without delay, and may be made returnable to the Court of Appeals.
4. **Time of issuance and requirements for service.**
   a. A writ of habeas corpus or any associated process may be issued and served on any day, at any time.
   b. The writ must be served upon the person to whom it is directed. If the writ is directed to a Tribal agency or employee, a copy of the writ must be served upon the Tribal prosecutor.
   c. The writ must be served by a Tribal policeman, or any other person directed to do so by the Justice or the Court, in the same manner as a civil summons, except where otherwise expressly directed by the Justice or the Court.
5. **Return of the writ, hearing, appeal.**
   a. **Return.**
      I. The person upon whom the writ is served shall make a return and state in that return:
         A. whether the petitioner is in that person's custody or under that person's power of restraint; and
         B. if the petitioner is in custody or otherwise restrained, the authority for and

cause of the custody or restraint; or

C. if the petitioner has been transferred to the custody of or otherwise restrained by another, to whom the party was transferred, the time and place of the transfer, the reason for the transfer, and the authority under which the transfer took place.

ii. The return must be signed and verified by oath unless the person making the return is a sworn Tribal officer making a return in an official capacity.

b. **Appearance and hearing.**

I. The person commanded by the writ shall bring the petitioner before the Court as commanded by the writ unless the petitioner cannot be brought before the court without danger to the petitioner's health. Sickness or infirmity must be confirmed in an affidavit by the person having custody of the petitioner. If the Court is satisfied with the truth of the affidavit, the Court may proceed and dispose of the case as if the petitioner were present or the hearing may be postponed until the petitioner is present.

ii. Unless the Court postpones the hearing for reasons of the petitioner's health, the Court shall immediately proceed to hear and examine the return. The hearing may be summary in nature. Evidence may be produced and compelled as provided by the laws governing criminal procedures and evidence.

c. **Refusal to obey the writ is contempt.** If the person commanded by the writ refuses to obey, that person must be adjudged to be in contempt.

d. **Disposition of petitioner.** If the Court finds in favor of the petitioner; an appropriate order must be entered with respect to the judgment or sentence in the former proceeding and any supplementary orders as to reassignment, retrial, custody, bail, or discharge as may be necessary and proper. If the Court finds for the prosecution, the petitioner must be returned to the custody of the person to whom the writ was directed.

1.18 TULALIP TRIBAL COURT OFFICERS. Notwithstanding any prior action of the Tribes, from the date of this Amendment, the date being hereunder set out as the date of enactment of this Resolution, no personal shall exercise the judicial authority of the Tulalip Tribes in any Tulalip Tribal Court, Employment Court, Gaming Court, or other court under this Ordinance 49 or any other Tulalip Ordinance or Regulation unless and until such person has been appointed and sworn in strict conformity with Sections 1.3.1, 1.3.2, 1.12.1, and 1.11.6.

TITLE II
CRIMINAL AND TRAFFIC PROCEDURE

Part 1 - General Preliminary Provisions

2.1.1 PURPOSE AND CONSTRUCTION. The provisions of this chapter shall be construed in accordance with Tribal custom as well as to achieve the following general goals:

1. to provide for the just determination of every criminal proceeding;
2. to protect the rights of individuals; and
3. to secure simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay.

2.1.2 General definitions. Unless otherwise specified in a particular section, the following definitions shall apply to this chapter:

1. "**Arraignment**" means the formal act of calling a defendant into open court in order that the defendant may enter a plea on the charge(s) against her or him.
2. "**Arrest**" means formally taking a person into custody in accordance with the manner authorized by law.
3. "**Bail**" means the security given, in the form of cash, stocks, bonds, real property, or any other form of approved collateral, for the primary purpose of insuring the presence of the defendant in a pending criminal proceeding.
4. "**Charge**" means a written statement presented to the Court accusing a person of commission of an offense, and includes a complaint or information.
5. "**Citation**" means a written direction that is issued by a law enforcement officer and that requests a person to appear before the court at a stated time and place to answer a charge for the alleged commission of an offense.
6. "**Conditional release**" means releasing a defendant from lawful custody, pending a criminal proceeding, after placing specific restrictions or regulations on the activities and associations of the defendant.
7. "**Contents**", when used with respect to oral, wire, radio, television, satellite, or computer communications, means not only the actual words or substances of the communication, but any information concerning the implied or intended meaning of the communication, the existence of the communication, and the identities of the parties to the communication as well.
8. "**Contraband**" means any property which is unlawful in itself, used for any unlawful purpose, or used in connection with or derived from any unlawful property or transaction.
9. "**Conviction**" means a judgment or sentence entered upon a plea of guilty or no contest, or upon a verdict or finding of a defendant's guilt rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury. Once a conviction has been expunged, it is no longer considered a conviction under Tribal law.
10. "**Counsel**" means an attorney or a Tribal Spokesman.
11. "**Defendant**" means a person who has been charged by the Tribes of allegedly violating a Tribal law and is appearing before the Tribal Court as a result of the charge or charges.
12. "**Elder**" or "**older person**" means a Tribal member or other individual residing on the Reservation who is
    c. 62 years of age or older;
    d. determined by the Court to be an elder, or
    e. at least 45 years of age and unable to protect himself or herself from abuse, neglect, or exploitation because of a mental disorder or physical impairment or because of frailties or dependencies brought about by age or disease or alcoholism.
13. "**Family member**" or "**household member**" means a spouse, former spouse, person related by blood or marriage, person residing with the offender due to adoption or foster placement, any person currently cohabiting with the offender at any time during the year immediately preceding the commission of any alleged abuse.
14. "**Frisk**" means an external patting of a person's outer clothing.
15. "**Included offense**" means an offense that:
    a. is established by proof of the same or less than all the facts required to establish the

commission of the offense charged;
b. consists of an attempt to commit the offense charged or to commit an offense otherwise included in the offense charged; or
c. differs from the offense charged only in the respect that a less serious injury or risk to the same person, property, or Tribal interest or a lesser kind of culpability suffices to establish its commission.

16. "**Indian**" means a person who is enrolled in a federally recognized Indian tribe or who is recognized as a Canadian Indian.
17. "**Judgment**" means an adjudication by the Tribal Court that the defendant is guilty or not guilty, and if the adjudication is that the defendant is guilty, the judgment includes the sentence pronounced by the Court.
18. "**Law enforcement officer**" means any person who by virtue of his or her office or employment by the Tribes or by another government is vested by law with a duty to
    a. enforce Tribal or federal civil regulatory laws,
    b. maintain public order, or
    c. make arrests for offenses while acting within the scope of his or her authority.
19. "**Mental disorder**" means any organic, mental, or emotional impairment which has substantial adverse effects on an individual's cognitive or volitional functions. It does not include an abnormality manifested only by repeated criminal or other antisocial behavior.
20. "**Notice to appear**" means a written document, issued by a clerk of the Tribal Court or a law enforcement officer, requesting the named person to appear before a judge at the stated time and date in Tribal Court to answer a charge for the alleged commission of an offense.
21. "**Offender**" means a person who has been convicted of an offense enumerated in Title III of this code.
22. "**Offense**" means a violation of a penal statute contained in the Code of Tribal Offenses, Title III, Ordinance 49.
23. "**Parole**" means the release from jail of a prisoner by the Court prior to the expiration of the prisoner's term, subject to any conditions imposed by the Court and the supervision of the Tribal Probation Officer.
24. "**Personal recognizance**" means the release from lawful custody of a defendant upon his or her promise to appear in court at all appropriate times.
25. "**Probation**" means the release by the Tribal Court without imprisonment, of an offender a defendant found guilty of a crime upon verdict or plea, subject to conditions imposed by the Tribal Court**,** and subject to supervision by the Tribal Probation Officer or his or her designee upon direction of the Court.
26. "**Sentence**" means the punishment imposed on an offender by the court and may include incarceration, labor on Tribally-owned property while incarcerated, restitution, or any combination thereof, together with participation in any rehabilitative programs ordered by the court.
27. "**Statement**" means:
    a. a writing signed or otherwise adopted or approved by a person;
    b. a mechanical, electronic, or other recording of a person's oral communications or a transcript thereof; or
    c. a writing containing a verbatim record as a summary of a person's oral communication(s).
28. "**Subpoena**" means a court order commanding a person to:
    a. appear at a certain time and place to give testimony upon a certain matter; or
    b. produce specific books, records, papers, documents, or other objects as may be necessary and proper; or
    c. do both (a) and (b).
29. "**Summons**" means a written order issued by the court that commands a person to appear before the court at a stated time and place to answer a charge for the offense set forth in the order.
30. "**Temporary roadblock**" means any structure, device, or other method used by law enforcement officers to control the flow of traffic through a point on a highway or road whereby all vehicles may be slowed or stopped.
31. "**Witness**" means a person whose testimony is desired in a criminal action, prosecution or proceeding.

2.1.3 Criminal jurisdiction.

1. An Indian defendant is subject to prosecution in Tribal Court for any offense enumerated in Title III of this Ordinance or another Tribal ordinance, which, is committed totally or partially within the exterior boundaries of the Tulalip Reservation, or is committed on lands and waters outside the Tulalip Reservation reserved or obtained by the Tribes and its people for their use by any treaty or law or in any other manner, except where such exercise of criminal jurisdiction is limited by federal or tribal law.
2. An offense is committed partially within the Tulalip Reservation or within other Tribal lands as described above, if either the conduct which is an element of the offense or the result which is an element occurs within the exterior boundaries of the Tulalip Reservation or other Tribal lands.
3. An offense based on an omission to perform a duty imposed by Tribal law is committed within the exterior boundaries of the Tulalip Reservation, regardless of the location of the defendant at the time of the omission.

2.1.4 Rights of defendant.

1. In all criminal proceedings, the defendant shall have the following rights:
   to be released from custody pending trial upon payment of reasonable bail;
   a. to appear and defend in person, or by counsel as provided in Section 1.10.1.
   b. to be informed of the nature of the charges pending against her or him and to have a copy of those charges;
   d. to confront and cross examine all prosecution or hostile witnesses;
   e. to compel by subpoena:
      i. the attendance of any witnesses necessary to defend against the charges; and
      ii. the production of any books, records, documents, or other things necessary to defend against the charges;
   f. to have a speedy public trial by judge or a jury, unless the right to a speedy trial is waived or the right to a jury trial is waived by the defendant, as provided in Section 2.9.1**;**
   g. to appeal any final decision of the Tribal Court to the Tribal Court of Appeals;
   h. not to be twice put in jeopardy by the Tribal Court for the same offense; and
   i. not to be required to testify.
   j. No inference may be drawn from a defendant's exercise of the right not to testify.

2.1.5 Subsequent prosecutions.

1. A subsequent prosecution will not constitute double jeopardy when the previous prosecution was properly terminated under any of the following circumstances:
   a. the defendant consents to the termination or waives, by motion an appeal upon a judgment of conviction or otherwise, the right to object to the termination of the prosecution;
   b. the Tribal Court finds that a termination, other than by acquittal, is necessary because:
      i. it is impossible to proceed with the trial in conformity with the law;
      ii. there is a legal defect in the proceeding that would make any judgment entered upon a verdict reversible as a matter of law;
      iii. prejudicial conduct, in or outside the courtroom, makes it impossible to proceed with the trial without injustice to either the defendant or the Tribes;
      iv. the jury cannot agree upon a verdict; or
      v. a false statement of a juror on voir dire prevents a fair trial;
   c. the former prosecution occurred in a court which lacked jurisdiction over the defendant or the offense;
   d. the subsequent prosecution was for an offense which was not completed when the former prosecution began; or
   e. there was a transfer of jurisdiction to another authority.
2. The following actions will not constitute an acquittal of the same offense if the complaint was:
   a. dismissed for insufficiency in form or substance;
   b. dismissed without prejudice upon a pretrial motion; or
   c. discharged for want of prosecution without a judgment of acquittal.

Part 2 - Investigative Procedures

2.2.1 INVESTIGATIVE SUBPOENAS.

1. Whenever the Tribal Prosecutor has a duty to investigate alleged unlawful activity, a judge may cause a subpoena to be issued commanding a specified person to appear before the Tribal Prosecutor or a designated agent of the Prosecutor and give testimony and produce such books, records, papers, documents, and other objects as may be necessary and proper to the investigation.
2. No person subpoenaed under this provision is required to give testimony or produce any evidence which may incriminate her or him, unless granted immunity.
3. An investigative subpoena may only be issued by a judge when supported by an affidavit of the Prosecutor sufficient to show that the administration of justice requires the testimony or information being sought.

2.2.2 Relief from improper subpoena. A person aggrieved by a subpoena issued pursuant to this part may, within a reasonable time, file a motion to dismiss the subpoena and, in the case of a subpoena duces tecum, to limit its scope. The motion must be granted if the subpoena was improperly issued or, in the case of a subpoena duces tecum, if it is overly broad in its scope.

2.2.3 Conduct of investigative hearing.

1. Before a judge, the prosecutor may examine under oath all witnesses subpoenaed pursuant to this part. Testimony must be recorded. The witness has the right to have counsel present at all times. Failure to obey, without just cause, a subpoena served under this part is punishable for contempt of court.
2. Proceedings conducted under this part are secret except to the extent that they supply probable cause for arresting or charging a defendant in a subsequent criminal action or are admissible in a later criminal trial. A person who divulges the contents of the Prosecutor's affidavit or the proceedings without legal privilege to do so is punishable for contempt of court.
3. All penalties for perjury or preparing, submitting, or offering false evidence apply to proceedings conducted under this part.

2.2.4 Self-incrimination -- immunity.

1. No person subpoenaed to give testimony pursuant to this part may be required to make a statement or to produce evidence that may be personally incriminating.
2. The prosecutor may, with the approval of the judge who authorized the issuance of the subpoena, grant a person subpoenaed immunity from the use of any compelled testimony or evidence or any information directly or indirectly derived from the testimony or evidence against that person in a criminal prosecution.
3. Nothing in this part prohibits a prosecutor from granting immunity from prosecution for or on account of any transaction, matter, or thing concerning which a witness is compelled to testify if the prosecutor determines, in the prosecutor's sole discretion, that the best interest of justice would be served by granting immunity.
4. After being granted immunity, no person may be excused from testifying on the grounds that the testimony may be personally incriminating. Immunity may not extend to prosecution or punishment for false statements given pursuant to the subpoena.
5. Nothing in this part requires a witness to divulge the contents of a privileged communication unless the privilege is waived as provided by law.

2.2.5 Authorization for search and seizure. A search of a person, object, or place may be made and evidence, contraband, and persons may be seized when a search is made:

1. by the authority of a search warrant; or
2. in accordance with federally judicially recognized exceptions to the warrant requirement.

2.2.6. Scope of search after arrest. When a lawful arrest is effected, a law enforcement officer may make a reasonable search of the person arrested and the area within such person's immediate presence, without a search warrant, for the purpose of:

1. protecting the officer from attack;
2. discovering and seizing the fruits of the crime;

3. discovering and seizing instruments, articles, or other property which may have been used in the commission of the offense, or which may constitute evidence of the offense, in order to prevent its destruction; or
4. preventing the person from escaping.

2.2.7 Execution of a search warrant.

1. A "search warrant" is a court order:
   a. in writing;
   b. in the name of the Tribes;
   c. signed by a judge;
   d. particularly describing the premises, property, place, or person to be searched and the instruments, articles, or items to be seized; and
   e. directed to a specific law enforcement officer commanding the officer to search for and seize the person or property designated in the warrant and bring the person or property before a judge.
2. Every judge has the authority to issue warrants for the search of persons, premises, and property and the seizure of goods, instruments, articles, or items.
3. Search warrants shall only be executed by law enforcement officers between the hours of 6:00 a.m. and 10:00 p.m., unless the issuing judge otherwise authorizes the warrant to be served anytime day or night.
4. Before entering the premises named in a search warrant, the law enforcement officer shall give appropriate notice of her or his identity, authority and purpose to the person to be searched, or to the person in apparent control of the premises to be searched.
5. Before undertaking any search or seizure pursuant to the warrant, the executing law enforcement officer shall read and give a copy of the original or duplicate original warrant to the person to be searched, or to the person in apparent control of the premises to be searched. If the premises are unoccupied or there is no one in apparent control, the law enforcement officer shall leave a copy of the warrant suitably affixed to the premises.
6. If the warrant is executed, a duplicate copy and a receipt for all articles taken shall be left with any person at the place from which any items were seized. The inventory of the items shall be made in the presence of the applicant for the warrant and the person from whose possession or premises the property was taken, if present, or in the presence of at least one credible person other than the applicant for the warrant.
7. Failure to give or leave a receipt of all items seized shall not render the seized property inadmissible at any subsequent trial.
8. Only reasonable and necessary force may be used to execute a search warrant.
9. The executing officer shall return the warrant to the Tribal Court within the time limit shown on the face of the warrant. A warrant is only effective within 10 days of the date of issuance. Warrants not executed within such time limits are void.
10. A warrant issued under this section shall not be held invalid due to minor irregularities in the warrant which do not substantially affect any rights of a person named in the warrant.

2.2.8 Grounds for a search warrant.

1. No search warrant shall issue except upon a written or oral sworn statement of a law enforcement officer or Tribal prosecutor, based upon reliable information and stating facts sufficient to support probable cause to believe that an offense has been committed, particularly describing the place, object or persons to be searched and who or what is to be seized, which sufficiently shows probable cause exists to indicate a search will discover:
   a. stolen property, embezzled property, contraband or otherwise criminally possessed property;
   b. property which has been or is being used to commit a criminal offense; or
   c. property which constitutes evidence of the commission of a criminal offense.

2. When a warrant is requested based on oral testimony, communicated by telephone or otherwise, a judge shall:
   a. immediately place the requesting person(s) under oath;
   b. record by voice recording device if available, or otherwise make a verbatim record, of the requesting person's statement and certify the accuracy of this record;

c. enter on an original warrant the grounds indicating probable cause exists to issue a warrant and the scope of the search warrant as requested or as modified;
d. sign the original warrant and enter on the face of the original warrant the exact time when the warrant was ordered to be issued; and
e. direct the requesting party to:
i. prepare a document identical to the original warrant to be known as a duplicate original warrant;
ii. sign the duplicate original warrant on behalf of the judge; and
iii. enter the exact time of execution on the face of the duplicate original warrant.

3. A judge may require the applicant to furnish further testimony or documentary evidence in support of the application for the warrant.

2.2.9 Scope of search.

1. The scope of any search shall only include those areas specifically authorized by the warrant and is limited to the least restrictive means reasonably necessary to discover the persons or property specified in the warrant.
2. Upon discovery of the person or property named in the warrant, the law enforcement officer shall take possession or custody of the person or property and search no further under the authority of the warrant.
3. If, in the course of an authorized search, the law enforcement officer discovers property not specified in the warrant and the officer has probable cause to believe the discovered property constitutes evidence of the commission of a criminal offense, the officer may also take possession of that property.

2.2.10 What may be seized with search warrant. A warrant may be issued under this section to search for and seize any:

1. evidence;
2. contraband; or
3. person for whose arrest there is probable cause, for whom there has been a warrant of arrest issued, or who is unlawfully restrained.

2.2.11 Seizures related to controlled substances.

1. As used in this statute "**controlled substance**" means a drug, substance, or immediate precursor in schedules I or II as specified in Title III, part 14 of this Ordinance.
2. The following are subject to forfeiture:
a. all controlled substances that have been manufactured, distributed, prepared, cultivated, compounded, processed, or possessed in violation of sections 3.14.6 or 3.14.7 of this Ordinance**;**
b. all money, raw materials, products and equipment of any kind that are used or intended for use in manufacturing, preparing, cultivating, compounding, processing, delivering, importing, possessing, or exporting any controlled substance in violation of section 3.14.6 or 3.14.7 except items used or intended for use in connection with quantities of marijuana in amounts of less than 60 grams;
c. all property that is used or intended for use as a container for anything enumerated in subsection (a) or (b) of this section;
d. all books, records, research products and materials, including formulas, microfilm, tapes and data, that are used or intended for use in violation of 3.14.6; and
e. all drug paraphernalia as defined in 3.14.5.
3. All property subject to forfeiture under subsection (2) of this section may be seized by an officer under a search warrant. Seizure without a warrant may be made if:
a. the seizure is incident to an arrest or a search warrant issued for another purpose;
b. the property subject to seizure has been the subject of a prior judgment in favor of the Tribes in a criminal proceeding or a forfeiture proceeding based on this title;
c. the officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or
d. the officer has probable cause to believe that the property was used or is intended to be used in violation of 3.14 et. seq.
4. Controlled substances that are possessed, transferred, offered for transfer, manufactured,

prepared, cultivated, compounded, or processed in violation of 3.14.6 or 3.14.7 and that are seized under the provisions of this part are contraband and shall be summarily forfeited to the Tribes. Controlled substances which are seized or come into the possession of the Tribes and the owners of which are unknown are contraband and shall be summarily forfeited to the Tribes.

2.2.12 Procedures for seizures related to controlled substances.

1. Property seized pursuant to Section 3.2.11(2)(a), (c), (d), or (e) is subject to summary forfeiture.
2. Property seized pursuant to Section 3.2.11(2)(b)is subject to the following procedure. An officer who seizes such property shall, within 45 days of the seizure, file a petition to institute forfeiture proceedings with the Clerk of the Court. The Clerk shall issue a summons at the request of the petitioner, who shall cause the same to be served upon all owners or claimants of the property as provided by the civil procedures of this Code.
3. Within 14 days after the service of the petition and summons, the owner or claimant of the seized property shall file a verified answer to the allegations concerning the use of the property described in the petition to institute forfeiture proceedings. No extension of the time for filing the answer may be granted and failure to answer within 14 days bars the owner or claimant from presenting evidence at any subsequent evidentiary hearing unless extraordinary circumstances exist.
    a. If a verified answer to the petition is not filed within 14 days after the service of the petition and summons, the court upon motion shall order the property forfeited to the Tribes.
    b. If a verified answer is filed within 14 days, the forfeiture proceeding must be set for hearing without a jury no sooner than 60 days after the answer is filed. Notice of the hearing must be given in the manner provided for service of the petition and summons.
    c. An owner of property who has a verified answer on file may prove that the use of the property occurred without his or her knowledge or consent;
    d. A claimant of a security interest in the property who has a verified answer on file must prove that his security interest is bona fide and that it was created after a reasonable investigation of the moral responsibility, character, and reputation of the purchaser and without knowledge that the property was being or was to be used for the purpose charged. However, no person who has a lien dependent upon possession for compensation to which he is legally entitled for making repairs or performing labor upon, furnishing supplies or materials for, or providing storage, repair, or safekeeping of any property and no person doing business within the Tulalip Reservation under any applicable law relating to financial institutions, loan companies or licensed pawnbrokers or regularly engaged in the business of selling the property or of purchasing conditional sales contracts for the property may be required to prove that his security interest was created after a reasonable investigation of the moral responsibility, character, and reputation of the owner, purchaser, or person in possession of the property when it was brought to such person.
4. If the court finds that the property was not used for the purpose charged or that the property was used without the knowledge or consent of the owner, it shall order the property released to the owner of record as of the date of the seizure.
5. If the court finds that the property was used for the purpose charged and that the property was used with the knowledge or consent of the owner, the property shall be disposed of as follows:
    a. If proper proof of his claim is presented at the hearing by the holder of a security interest, the court shall order the property released to the holder of the security interest if the amount due him is equal to or in excess of the value of the property as of the date of seizure, it being the purpose of this part to forfeit only the right, title, or interest of the owner. If the amount due the secured creditor is less than the value of the property, the property, if it is sold, must be sold at public auction by the Tribal police, or the police may return the property to the secured creditor without an auction.
    b. If no claimant exists and the Tulalip Police Department wishes to retain the property for its official use, it may do so. If such property is not to be retained, it must be sold.
    c. f a claimant who has presented proper proof of his or her claim exists and the Tulalip Police Department wishes to retain the property for its official use, it may do so provided it compensates the claimant in the amount of the security interest outstanding at the time of the seizure.
6. In making a disposition of property under this part, the court may take any action to protect the rights of innocent persons.

7. Whenever property is seized, forfeited and sold under the provisions of this part, the net proceeds of the sale must be distributed as follows:
    a. to the holders of security interests who have presented proper proof of their claims, if any, up to the amount of their interests in the property,
    b. the remainder, if any, to the Tribal Police Drug Enforcement Fund.

2.2.13 Disposition of seized property not associated with a drug-related crime.

1. A hearing may be requested before the Tribal Court within 10 working days of any seizure to determine the disposition of all property seized by law enforcement officers.
2. Upon satisfactory proof of ownership, the property shall be delivered to the owner, unless such property is contraband or is to be used as evidence in a pending case.
3. Non-contraband property taken as evidence shall be returned to the owner after final judgment has been rendered.
4. Non-contraband property may be returned to the owner prior to final judgment upon application to and at the discretion of the court.
5. Property confiscated as contraband or taken as evidence and of unknown ownership and unclaimed for six months shall become the property of the Tribes and may be:
    a. destroyed;
    b. sold at public auction;
    c. retained for the benefit of the Tribes;
    d. lawfully disposed of as ordered by the Tribal Court; or
    e. otherwise disposed of in accordance with Tribal Law.

2.2.14 Investigative stop. In order to obtain or verify an account of the person's presence or conduct or to determine whether to arrest the person, a law enforcement officer may stop any person or vehicle that is observed in circumstances that create a particularized suspicion that the person or occupant of the vehicle has committed, is committing, or is about to commit an offense.

2.2.15 Stop and frisk. A law enforcement officer who has lawfully stopped a person under Section 3.2.14:

1. may frisk the person and take other reasonable steps necessary for protection if the officer has reasonable cause to suspect that the person is armed and presently dangerous to the officer or another person present;
2. May take possession of any object that is discovered during the course of the frisk if the officer has probable cause to believe the object is a deadly weapon;
3. may demand the name and present address of the person; and
4. shall inform the person, as promptly as possible under the circumstances and in any case before questioning the person, that the officer is a law enforcement officer, that the stop is not an arrest but rather a temporary detention for an investigation, and that upon completion of the investigation, the person will be released if not arrested.

2.2.16 Roadblocks.

1. Law enforcement officers may use a temporary roadblock in order to apprehend a person suspected of committing a criminal offense.
2. Unless exigent circumstances exist justifying a departure from the requirements given below, the minimum requirements to be met by law enforcement officers when establishing roadblocks include:
    a. establishing a roadblock at a point on the highway clearly visible at a distance of not less than 100 yards in either direction;
    b. placing a sign on the center line of the highway at the point of the roadblock displaying the word "stop" in letters of sufficient size and luminosity to be readable at a distance of not less than 50 yards in both directions either in daytime or darkness;
    c. placing a flashing or intermittent beam of light, which is visible to oncoming traffic for at least 100 yards, on the side of the road at the point of the roadblock; and
    d. placing warning signs, which will attract an oncoming driver's attention, at least 200 yards prior to the roadblock indicating that all vehicles should be prepared to stop.

2.2.17 Duration of stop. A stop authorized under Section 2.2.14 and Section 2.2.16 may not last longer than is necessary to effectuate the purpose of the stop.

Part 3 - Commencing Prosecution

2.3.1 CITATION. Prosecution for all Class A offenses and criminal traffic violations may be initiated by citation issued by a law enforcement officer upon probable cause where the officer has attested to the truth of the allegations contained in the citation under oath. Civil traffic infraction enforcement shall be initiated by Notice of Infraction pursuant to Section 2.12.1.

2.3.2 Complaint.

1. All criminal prosecutions for Class B, Class C, Class D, and Class E offenses shall be initiated by complaint.
2. The complaint is a written statement of the essential facts constituting the offense charged.
3. The complaint shall contain:
   a. the name of the person accused, if known, or a description sufficient to identify the person accused of committing the alleged offense;
   b. the general location where the alleged offense was committed;
   c. the name and code citation of the alleged offense;
   d. a short, concise statement of the specific acts or omissions to act constituting an offense;
   e. the person, if any, against whom the alleged offense was committed, if known, except in the case of a sexual offense or an offense involving a minor;
   f. the date and approximate time of the commission of the alleged offense, if known; and
   g. the signature of a Tribal prosecutor.
4. No minor omission from or error in the form of the complaint shall be grounds for dismissal unless the defendant is shown to be significantly prejudiced by the omission or error.
5. A specific Class of an offense need not be included in the complaint. If a factual allegation is contained in the complaint which will supply the information needed to determine the degree of the offense, the Judge may use that information to determine bail. If no factual allegation is made, the offense shall be considered the least degree possible under the offense charged, for the purposes of setting bail.

2.3.3 Amending the complaint.

1. A complaint may be amended in matters of substance at any time prior to arraignment without leave of the Tribal Court.
2. A complaint may be amended in matters of substance at any time before the commencement of trial with leave of the Tribal Court.
3. When the prosecution seeks leave to amend a complaint as to a matter of substance, the prosecutor shall file:
   a. a motion for leave to amend stating the nature of the proposed amendment;
   b. a copy of the proposed complaint, as amended; and
   c. an affidavit setting forth facts and circumstances sufficient to show probable cause exists to justify the amended complaint.
4. If the motion is timely filed and the amended complaint is supported by probable cause, the court shall grant leave to amend.
5. The defendant shall be arraigned on the amended complaint without unreasonable delay.
6. The defendant shall be given a reasonable period of time to prepare for trial on the amended complaint.
7. The court may permit a complaint to be amended as to form at any time before a verdict or a finding if no additional or different offense is charged and if the substantial rights of the defendant are not prejudiced.
8. No charge may be dismissed because of a formal defect which does not tend to prejudice any substantial right of the defendant.

2.3.4 Joinder and severance of offenses and defendants.

1. Two or more offenses or different statements of the same offense may be charged in the same complaint in separate counts, or alternatively, if the offenses charged are of the same or similar

character and are based on the same transactions connected together or constituting parts of a common scheme or plan. Allegations made in one count may be incorporated by reference in another count.

2. The Tribal Court may order that different offenses or counts set forth in the complaint be tried separately or consolidated.
3. The prosecution is not required to elect between the different offenses or counts set forth in the complaint and the defendant may be convicted of any number of the offenses charged, except as provided in section 2.3.6. Each offense of which the defendant is convicted must be stated in the verdict or the finding of the Tribal Court.

2.3.5 Discharge of Co-Defendant.

1. When two or more persons are included in the same charge, the Tribal Court may, at any time prior to the defendants presenting their cases and upon application of the prosecutor, direct any defendant be discharged so that the defendant may be a witness for the prosecution.
2. When two or more persons are included in the same complaint and the Tribal Court determines that there is insufficient evidence to prosecute one of the named defendants, the Tribal Court must discharge that defendant before the evidence is closed so that the discharged defendant may be a witness for the co-defendant.

2.3.6 Multiple charges from the same transaction.

1. When the same transaction may establish the commission of more than one offense, a person charged with conduct may be prosecuted for each offense.
2. A person may not, however, be convicted of more than one offense if:
   a. one offense is included in the other;
   b. one offense consists only of a conspiracy or other form of preparation to commit the other;
   c. inconsistent findings of fact are required to establish the commission of the offenses; the offenses differ only in that one is defined to prohibit a specific instance of conduct; or
   d. the offense is defined to prohibit a continuing course of conduct, and the defendant's course of conduct was interrupted, unless the law provides that the specific periods of the conduct constitute separate offenses.

Part 4 - Arrest and Related Procedures

2.4.1 METHOD OF ARREST.

1. An arrest is made by actually restraining the person to be arrested or by that person voluntarily submitting to the custody of the person making the arrest.
2. All necessary and reasonable force may be used in making an arrest, but the person arrested shall not be subject to any greater restraint than is necessary to hold or detain the person.
3. All necessary and reasonable force may be used to effect an entry into any building or property or part thereof to make an authorized arrest.

2.4.2 Time of making arrest. An arrest may be made any day of the week and at any time of the day or night. A person, however, cannot be arrested in her or his home or private dwelling at night for a Class A, Class B, or Class C offense without an arrest warrant specifically permitting arrest at night except for an offense involving damage to a person and the provisions of section 2.4.3 are followed.

2.4.3 Arrest by law enforcement officer.

1. A law enforcement officer may arrest a person within the exterior boundaries of the Tulalip Reservation under the following circumstances:
   a. when the officer has a warrant commanding that the person be arrested or when the officer believes on reasonable grounds that a warrant for the person's arrest has been issued by the Tribal Court or that a warrant for the person's arrest has been issued in another jurisdiction;
   b. when the person has committed an offense in the officer's presence; or
   c. when the officer has probable cause, as reflected by stated and provable facts, to believe the person to be arrested has committed an offense and exigent circumstances require an

immediate warrantless arrest in order to prevent the person from
    i. fleeing the jurisdiction or concealing himself or herself to avoid arrest;
    ii. destroying or concealing evidence of the commission of an offense;
    iii. injuring another person; or
    iv. damaging property belonging to another.

2. When an arrest is made without an arrest warrant, the arresting officer must inform the person to be arrested, as soon as practicable, of his or her authority to make the arrest and the reasons for making the arrest.
3. A law enforcement officer may arrest a person, including at her or his place of residence, without an arrest warrant if the officer has probable cause to believe the person is committing or has committed abuse against an elder, family member, or household member, regardless of whether the offense took place in the responding law enforcement officer's presence.
4. Arrest is the preferred response in situations:
    a. involving bodily harm to an elder, family member or household member;
    b. involving use or threatened use of a weapon against an elder, family member or household member; or
    c. where there appears to be imminent danger of bodily harm to another.
5. If an arrest is made without a warrant, the Court shall make a determination of the existence of probable cause for the arrest at an initial appearance within two working days following the arrest.
6. For any class of offense, in lieu of making a custodial arrest, a law enforcement officer may issue a citation requiring the defendant to appear in Tribal Court at a designated time and on a designated date.
7. An arrest made outside the boundaries of the Tulalip Reservation shall be valid if made pursuant to the laws of the jurisdiction where the arrest occurred.

2.4.4 Arrest warrants.

1. An arrest warrant shall be issued by a judge, based on a sworn complaint or affidavit showing there is probable cause to believe an offense has been committed and the named person has committed the offense. The warrant shall:
    a. be in writing in the name of the Tribes;
    b. set forth the nature of the offense;
    c. command the person against whom the sworn complaint or affidavit was made be arrested, or a description of the person as well as any alias used by the person;
    d. be signed by a judge; and
    e. include any bail amount, if deemed appropriate by the issuing judge.
2. A law enforcement officer shall, as soon as practicable, inform the person named in the arrest warrant of:
    a. her or his authority to make the arrest;
    b. the intention to arrest the person;
    c. the grounds for the arrest;
    d. the existence of an arrest warrant; and
    e. the amount of bail, if specified in the warrant.
3. A copy of the arrest warrant must be shown to the person arrested, as soon as practicable.
4. An arrest made pursuant to a warrant shall not be dismissed due to minor irregularities in the warrant which do not substantially affect any rights of the arrested person.

2.4.5 Notice of rights prior to interrogation.

1. Prior to questioning any person in custody, a law enforcement officer must inform the person in clear and unequivocal terms of the following rights:
    a. that the person has the right to remain silent;
    b. that anything said by him or her can and will be used against the person in any subsequent court proceedings;
    c. that the person has the right to legal counsel or representation as provided in Section 2.5.4 prior to answering any questions; and
    d. that if, at any point during questioning, the person indicates that she or he wishes to remain silent the questioning will cease.
2. Any statement obtained in violation of these rights may not be admitted into evidence.
3. The fact that a person chooses to remain silent cannot be used against her or him in any

subsequent criminal proceedings.

2.4.6 Summons.

1. The Tribal Court may or, upon request of a prosecutor, shall issue a summons instead of an arrest warrant.
2. The summons may be served personally or by first-class mail.
3. A summons shall:
   a. be in writing in the name of the Tribes;
   b. state the name of the person summoned, along with that person's address, if known; set forth the nature of the offense charged;
   c. set the date issued;
   d. command the person to appear in Tribal Court at a specified date and time; and
   e. be signed by a judge.

2.4.7 Written report when no arrest made in abuse situation. When a law enforcement officer is called to the scene of a reported incident of elder or domestic abuse but does not make an arrest, the officer shall file a written report with the commanding officer stating the reasons for deciding not to make an arrest.

2.4.8 Extradition.

1. If a Tribal law enforcement officer arrests an individual based on a warrant issued by the State of Washington, or a reasonable belief that a warrant has been issued by the State of Washington, the Tribes may hold such individual for up to forty-eight hours (48) after any Tribal sentence has been served, for transport by State officials. If State officials do not retrieve the defendant within that time, he or she shall be released. The defendant shall be entitled to bail at the amount set in the State warrant.
2. If a Tribal law enforcement officer arrests an individual pursuant to Section 2.4.3 above based on a warrant from a jurisdiction other than the State of Washington, or based on a reasonable belief that a warrant has been issued by a jurisdiction other than the State of Washington, he shall be entitled to a hearing before the Tribal Court on the following issues:
   a. whether such warrant exists; and
   b. whether the individual arrested is the person named in the warrant; and
   c. whether the court issuing the warrant had jurisdiction to issue the warrant; and
   d. whether the arrest by Tribal law enforcement was lawful.

   After being fully informed of his or her rights, the defendant may, in writing, waive the right to a hearing. If not waived, the hearing shall be held within two days of the arrest, and the defendant shall have the right to be represented by the Tribal Defenders Office. Prior to the hearing the defendant shall be entitled to bail at the sum set in the warrant.
3. If at the hearing the Court does not find these factors to be established by the Tribal Prosecutor by clear and convincing proof, it shall order the defendant immediately released. If at the hearing the Court finds these factors to be established by the Tribal Prosecutor by clear and convincing proof, it shall order the defendant held for a reasonable time not to exceed ten days, after any Tribal sentence has been served, for the other jurisdiction to retrieve the defendant. After the hearing the defendant may be admitted to bail in an amount set by the Tribal Court, on the condition that he or she surrender himself or herself at a specified time, and on such additional restrictions as the Court deems appropriate. If such other jurisdiction does not retrieve the defendant within that time, the defendant shall be released.
4. Nothing in this section shall be considered to limit or restrict an individual's right to seek a writ of habeas corpus.

Part 5 - Initial Appearance, Presence of Defendant, and Right to Counsel

2.5.1 INITIAL APPEARANCE.

1. A person arrested, whether with or without a warrant, must be taken before a judge of the Tribal Court for an initial appearance within two working days following the arrest.
2. A person not arrested shall appear for an initial appearance at the time and place designated in the citation or summons.
3. A person who is arrested without a warrant, shall have a judicial determination of probable cause at the initial appearance. If probable cause is not found, the person shall be released immediately without conditions.

2.5.2 Duty of court at initial appearance.

1. The judge shall inform the defendant of:
    a. the charge or charges against him or her;
    b. the maximum penalty allowed under Tribal Law for the offense;
    c. the defendant's right to counsel at defendant's expense;
    d. the right to call any witness on her or his behalf;
    e. the right to request a jury trial where the crime charged carries a possible jail sentence, unless the prosecutor, prior to plea, informs the defendant that there shall no jail time imposed in the event of a successful prosecution;
    f. the right to remain silent and that any statement made by her or him may be used in evidence against her or him at any subsequent court proceedings;
    g. the general circumstances under which the defendant may obtain pretrial release;
    h. the right to cross-examine the Tribes' witnesses; and
    i. the right to have up to 5 working days before arraignment.
2. The judge shall admit the defendant to bail as provided by Section 2-6-2 of this Code.

2.5.3 Presence of defendant. Unless otherwise set forth in this chapter, a defendant shall be present at all stages of the proceedings. The Court in its discretion may allow the defendant to appear through counsel.

2.5.4 Right to counsel.

1. During the initial appearance before the court, every defendant must be informed of the right to have counsel at his or her own expense.

2. If the defendant wishes to obtain counsel, the court shall grant a reasonable time prior to arraignment for defendant's attorney to enter an appearance in the cause.

Part 6 - Bail

2.6.1 RELEASE PRIOR TO CRIMINAL PROCEEDINGS. A person charged with any offense is bailable before conviction and shall be released from custody by the court upon reasonable conditions that ensure the appearance of the defendant and protect the safety of the community or of any person.

2.6.2 Release or detention.

1. The release or detention of the defendant must be determined immediately upon the defendant's initial appearance.
2. The criteria for determining the conditions of release include, but are not limited to the following:
    a. defendant's employment status and work history;
    b. defendant's financial condition;
    c. the nature and extent of defendant's family relationships and ties to the Reservation community;
    d. defendant's past and present residences;
    e. names of individuals personally agreeing to assure defendant's court appearance;
    f. the nature and circumstances of the current charge, including whether the offense involved the use of force or violence;
    g. the defendant's prior criminal record, if any, and whether, at the time of the current arrest or offense, the defendant was on probation, on parole, or on other release pending trial, sentencing, or appeal for an offense;

h. the defendant's record of appearance at court proceedings; and
i. the nature and seriousness of the danger to any person or the community that would be posed by the defendant's release.

3. The Court may in its discretion grant temporary release from custody under any conditions the Court deems appropriate.

2.6.3 Release on own recognizance and reasonable bail.

1. Any person in custody, if otherwise eligible for bail, may be released on his personal recognizance subject to such conditions as the court may reasonably prescribe to assure his appearance when required.
2. In all cases, the amount set for bail must be reasonable.
3. Reasonable bail reflects an amount which is:
   a. sufficient to ensure the presence of the defendant in any pending criminal proceeding;
   b. sufficient to assure compliance with the conditions set forth in a bail or release order; and
   c. not oppressive.

2.6.4 Conditions upon defendant's release.

1. The court may impose any condition that will reasonably ensure the appearance of the defendant as required or that will ensure the safety of any person or the community, including, but not limited to the following conditions:
   a. the defendant shall remain in the custody of a designated person who agrees to supervise the defendant and report any violation of a release condition to the court, if the designated person is reasonably able to assure the court that the defendant will appear as required and will not pose a danger to the safety of any person or the community;
   b. the defendant may not commit an offense during the period of release;
   c. the defendant shall maintain employment or, if unemployed, actively seek employment;
   d. the defendant shall abide by specified restrictions on the defendant's personal associations, place of abode, and travel;
   e. the defendant shall avoid all contact with an alleged victim of the crime and any potential witness who may testify concerning the offense;
   f. the defendant shall comply with a specified curfew;
   g. the defendant may not possess a firearm, destructive device, or other dangerous weapon;
   h. the defendant may not use or possess alcohol, or any dangerous drug or other controlled substance without a legal prescription;
   i. the defendant shall report on a regular basis to a designated agency or individual, or both;
   j. the defendant shall furnish bail; or
   k. the defendant shall return to custody for specified hours following release from employment, schooling, or other approved purposes.
2. The court shall subject the defendant to the least restrictive condition or combination of conditions that will ensure the defendant's appearance and provide for protection of any person or the community. At any time, the court may, upon a reasonable basis, amend the order to impose additional or different conditions of release upon its own motion or upon the motion of either party.

2.6.5 Bail schedule.

1. The Chief Judge of the Tribal Court shall establish and post a schedule of bail for offenses to be used by law enforcement officers.
2. A law enforcement officer may accept bail on behalf of the Tribal Court whenever the amount of bail is specified in the warrant of arrest or in accordance with the posted bail schedule.
3. When a law enforcement officer accepts bail, based on an arrest warrant or current bail schedule, the officer shall give a signed receipt to the offender setting forth the bail received and the name of the person posting the bail. At the earliest time practicable, the law enforcement officer shall deliver the bail and duplicate copy of the bail receipt to the Tribal Court; obtaining a receipt for the bail delivered from a Clerk of Court.
4. The Chief Judge of the Tribal Court shall replace any existing bail schedule with a revised bail schedule by January 31 of each year.

5. Bail may be specifically set by a judge for any offense not listed on the posted bail schedule.

Release Options

Citation Release

This procedure involves the issuance of a citation by the arresting officer to the defendant, informing the defendant that he or she must appear at an appointed court date. The citation is usually issued immediately after an individual is arrested but may be forwarded to the defendant via United States Mail. Citation Release is often used for minor offenses and may be used pursuant to this schedule for any Class A offense listed below. At the officer's discretion, he or she may require the execution of a personal recognizance bond in addition to the citation.

Personal Bond (Non-Surety)

This procedure requires that the alleged offender sign a non-surety bond wherein he or she promises to appear when summoned to court via United States Mail subject to a monetary penalty for his or her failure to appear when summoned. This procedure allows the alleged offender to obtain immediate release subject to his or her consent to the jurisdiction of the court, yet limiting the jurisdiction to the amount defined in the bond in an action *in rem*. This preserves the alleged offender's right to contest jurisdiction in any subsequent criminal action, yet it provides an assurance that the individual will return or forfeit the described amount. The bond may be executed civilly against the alleged offender in his or her home jurisdiction should he or she fail to appear. The Tribe's right to pursue criminal sanctions for refusing to appear is also preserved.

Cash Bail

To be released on cash bail, the alleged offender must post with the court the cash amount of the bail to secure his or her return to court on the set times and dates until the case is concluded. If the defendant shows up for the scheduled court appearances, the cash is returned to t hem. If the defendant fails to appear, the cash bond is forfeited, or given up, to the court.

Surety Bond

A surety bond involves a contract with a bondsman (also known as a bond agent or bail agent) for the bail amount. The bondsman, usually being underwritten by an insurance company licensed by the state, interviews the arrested individual, family members and the final bond guarantor prior to forming an agreement to assure that the accused will appear in court. With his money on the line, a bondsman has a financial interest in supervising individuals released on bond and to make certain that they appear for trial. If a defendant fails to appear, the bail agent has time and the financial incentive to find that individual and bring them in. Simply stated, bondsmen profit only when the defendant shows up for trial. Bonds are usually written for a premium percentage of the full amount of bail. Collateral from the guarantor is then used to secure the remaining bail amount. The bondsman guarantees to the court that they will pay the bond forfeiture if a defendant fails to appear for their scheduled court appearances. Using the assets and property of the bondsman's insurance makes this guarantee.

Property Bond

A alleged offender occasionally may obtain release from custody by means of posting a property bond. In this procedure the court records a lien on property owned by the defendant to secure the amount of bail. If the defendant fails to appear at a schedule court date, the court may institute foreclosure proceedings against that property to obtain the bail amount. Property bonds may only be secured by petition to the court.

Rules for Interpreting Bail Schedule

The Bail Schedule provides a guide to Police Officers whereby they may exercise discretion to hold or release a defendant. Officers may veer from this schedule but should be prepared to articulate their reasons for doing so. These rules and the Bail Schedule outlined below are provided pursuant to TTO 49, Section 2.6.5 but should be read in light of and should not be interpreted in contradiction to relevant provisions of TTO 49.

- Judges may use this schedule and these rules as a guide but the same shall not be construed to limit the discretion of the judge.

- Pursuant to Section 1(a) and (B) of the Bail Schedule, officers shall release alleged offenders unless the alleged offender resides off the Tulalip Reservation and the officer can articulate a reason for securing the alleged offender's return with a personal recognizance bond.

- Pursuant to Section 1 (c) of the Bail Schedule, officers should favor release of alleged offenders but may require the execution of a personal recognizance bond if they have been given any indication that the alleged offender is or has been non-compliant with the lawful directives of a law enforcement official or judicial forum.

- Pursuant to Section 1(d) of the Bail Schedule, officers should favor release of alleged offenders but may require the execution of a personal recognizance bond or cash bail if they have been given any indication that the alleged offender is or has been non-compliant with the lawful directives of a law enforcement official or judicial forum. If officers or any police agency have knowledge of the alleged offender's prior unfavorable history of compliance with officer or judicial directives, they should favor the imposition of bail or a personal recognizance bond.

- Pursuant to Section 1 (e) of the Bail Schedule, officers should favor holding alleged offenders subject to a personal recognizance bond, surety bond or cash bail unless the officers have knowledge of the alleged offender's ties to the Tulalip Community and these ties indicate that the individual will return for court hearings when summoned. Relevant ties include residence on the Tulalip Reservation for a period of time; employment in the Tulalip Community; and property subject to Tulalip Court jurisdiction.

In all instances where an alleged offender is held subject to bail or other conditions of release, the alleged offender is entitled to a first appearance before the court pursuant to local criminal rules and a finding that probable cause exists to hold him or pending the filing of formal charges. No alleged offender may remain in custody or subject to release on bail or other restrictions for more than five (5) days unless a criminal complaint is sworn against him or her.

Bail Schedule

1. A person arrested for an alleged violation of an offense may be released on bail as follows.
    a. For Class A offenses where no fine amount is specifically provided, the alleged offender shall be released on his or her own recognizance. Provided that, if the alleged offender resides outside the Tulalip Reservation, he or she may be directed to sign a personal recognizance bond for $100 or for the amount defined in TTO 49, Title III, Section 3.1.9 (1) (a) as this section may be amended;
    b. For Class B offenses where no fine amount is specifically provided, the alleged offender shall be released on his or her own recognizance. Provided that, if the alleged offender resides outside the Tulalip Indian Reservation, he or she may be directed to sign a personal recognizance bond for $250 or for the amount defined in TTO 49, Title III, Section 3.1.9 (1) (b) as this section may be amended;
    c. For Class C offenses where no fine amount is specifically provided, the alleged offender shall be released on his or her recognizance. Provided that, if the alleged offender resides outside the TUlalip Indian Reservation, he or she may be directed to sign a personal recognizance bond for $1,000 or for the amount defined in TTO 49, Title III, Section 3.1.9 (1) (c) as this section may be amended;
    d. For Class D offenses where no fine amount is specifically provided, the alleged offender may, consistent with the Rules for Interpreting Bail, be released on his or her own recognizance upon the execution of a personal recognizance bond for $2,500 or for the amount defined in TTO 49, Title III, Section 3.1.9 (1) (d) as this section may be amended. At the discretion of the arresting officer or his / her commander, the alleged offender may be directed to post cash bail of the same amount;
    e. For Class E offenses where no fine amount is specifically provided, the alleged offender may, consistent with the Bail Rules, be released on his or her own recognizance upon the execution of a personal recognizance bond for $5,000 or for the amount defined in TTO 49, Title III, Section 3.1.9 (1) (e) as this section may be amended. At the discretion of the arresting officer or his / her commander, the alleged offender may be directed to post

cash bail of the same amount;

f. For Class E offenses that specifically allow for hold without bail, officers shall hold without bail unless, consistent with the Rules for Interpreting Bail Schedule, the officers have knowledge of the alleged offender's ties to the Tulalip Community and these ties indicate that the individual will return for court hearings when summons. Provided that: officers shall favor holding an alleged offender without bail if, in the officer's discretion, the alleged offender is deemed a danger to any other individual.

This Bail Schedule with forms annexed is hereby adopted and approved.

_____
JUDGE

Form No. 1 – Personal Bond to Secure Appearance
After Notice via Mail

The Tulalip Tribal Court
For the Tulalip Indian Reservation

The Tulalip Tribes of Washington,	)	
Plaintiff,	)	NO. TUL-CR-
	)	
v.	)	Personal Bond
	)	
_____,	)	
Name of Accused	)	
Defendant,	)	
_____)		

The Defendant swears or affirms under penalty of perjury:

This if the Defendant fails to appear personally before the Tulalip Tribal Court at the date and time specified in a Summons lawfully issued from this court and delivered via United States Mail to the above-named defendant at the following address: _____
_____, and remain there to answer to a complaint filed against him or her, and to appear at such other times as may be ordered by the court until final disposition of this case, then the defendant shall pay a fine of $ _____ or shall forfeit $ _____ promised or deposited as a personal bond. If the defendant appears at all times so required or if the Tulalip Tribes fails to summon the Defendant within one year of the date of this bond, this bond shall be void. If at any time the defendant's address changes, the defendant shall update this record.

Signed and dated in Tulalip

_____
Signature of Defendant

_____
Print Name

Signed before me on this day _____
Judge

2.6.6 Changing bail or conditions of release.

1. Upon application by the Tribes or the defendant, the Tribal Court may increase or reduce the amount of bail, alter the conditions in the bail or release order, or revoke bail.
2. Reasonable notice of such application must be given to the opposing parties or their attorneys by

the applicant.

2.6.7 Forms of bail.

1. Bail may be furnished in the following ways, as the court may require:
    a. by a deposit with the court of an amount equal to the required bail of cash or other personal property approved by the court;
    b. by pledging real estate situated within the Reservation with an unencumbered equity, not exempt, owned in fee simple by the defendant or sureties at a value double the amount of the required bail;
    c. by posting a written undertaking by the defendant and by two sufficient sureties; or
    d. by posting a commercial surety bond executed by the defendant and by a qualified agent for and on behalf of the surety company.
2. The amount of the bond must ensure the appearance of the defendant at all times required through all stages of the proceeding and remain in effect until final sentence is pronounced in open court.
3. Nothing in this part prohibits a surety from surrendering the defendant in a case in which the surety feels insecure in accepting liability for the defendant.

2.6.8 Property and surety bonds.

1. If property posted as a condition of release is personal property, the defendant or sureties shall file a sworn schedule that must contain a list of the personal property, including a description of each item, its location and market value, and the total market value of all items listed.
2. If the property is real estate the defendant or sureties shall file a sworn schedule that must contain a legal description of the property, a description of any encumbrance on the property, including the amount of each encumbrance and its holder, and the market value of the unencumbered equity owned by the defendant or sureties;
3. If the property is a written undertaking with sureties, each surety must be a Reservation resident and worth the amount specified in the undertaking, exclusive of property exempt from execution; but the court may allow more than two sureties to justify severally and in amounts less than that expressed in the undertaking if the whole justification is equivalent to the amount required.
4. If the property posted is a commercial bond, it may be executed by any domestic or foreign surety company that is qualified to transact surety business in Washington. The undertaking must state the following:
    a. the name and address of the surety company that issued the bond;
    b. the amount of the bond and the unqualified obligation of the surety company to pay the court should the defendant fail to appear as guaranteed; and
    c. a provision that the surety company may not revoke the undertaking without good cause.
5. The court may examine the sufficiency of an undertaking and take any action it considers proper to ensure that a sufficient undertaking is posted.

2.6.9 Release of bail. When all conditions of release have been satisfactorily performed and the defendant has been discharged from any obligations imposed by the Tribal Court, the court shall return any security posted by the defendant to satisfy bail requirements.

2.6.10 Violation of a release order.

1. If a defendant violates a condition of release, including failure to appear, the prosecutor may make a motion to the court for revocation of the order of release. The court may issue a warrant for the arrest of a defendant charged with violating a condition of release and declare the bail to be revoked. Upon arrest, the defendant must be brought before the court without unnecessary delay and the court shall conduct a hearing and re-determine bail. On finding probable cause that the defendant has violated a tribal, state, or federal law, or on finding a violation of any other release condition by clear and convincing evidence, the Court may:
    a. reinstate the original release order on the same conditions and amount of bail; or
    b. revoke the original bail, increase the amount of the bail and modify the conditions of release; or
    c. at the defendant's request, revoke the defendant's release for any period of time, up to 10 days, and then reinstate release on the original conditions and bail or on such conditions and bail as the Court deems appropriate. Such time shall not be credited as time served

under Section 2.11.10 or 2.11.11.

2. This section provides the exclusive remedy for a violation of a release order. A defendant may not be charged with contempt or found in contempt for violation of a release order.
3. Neither a cash bond nor a commercial bond may be forfeit for violation of release conditions, except for failing to appear for court proceedings without a lawful excuse.
4. Notice of an order of forfeiture must be mailed to the defendant and the defendant's sureties at their last-known address(es) within 10 working days of the date of the order or the bond becomes void.

2.6.11 Forfeiture order.

1. If within 90 days of the forfeiture order, the defendant, or the defendant's surety, appears and presents evidence justifying the defendant's failure to appear or otherwise meet the conditions found in the release order, the Tribal Court may direct the forfeiture of the bail to be discharged upon such terms as are just.
2. If the forfeiture order is not discharged by the Tribal Court, the court shall proceed with the forfeiture of bail as follows:
   a. if money has been posted as bail, the court shall pay the money to the Tribal Board Treasurer; or
   b. if other property is posted as a condition of release, the property must be sold in the same manner as property sold in civil actions. The proceeds of the sale must be used to satisfy all court costs and prior encumbrances, if any, and from the balance, a sufficient sum to satisfy the forfeiture must be paid to the Tribal Board Treasurer.
3. If a surety bond has been posted as bail, execution may be issued against the sureties or the surety company in the same manner as executions in civil actions.

2.6.12 Surrender of defendant.

1. At any time before the forfeiture of bail:
   a. the defendant may surrender to the court or any Tribal law enforcement officer; or
   b. the surety company may arrest the defendant and surrender the defendant to the court or to any Tribal law enforcement officer.
2. The law enforcement officer will detain the defendant in the officer's custody and shall file a certificate, acknowledging the surrender, in court. The court may then order the bail exonerated.

Part 7 - Arraignment of the Defendant

2.7.1. JOINT DEFENDANTS. Defendants who are jointly charged may be arraigned separately or together in the discretion of the court.

2.7.2. Procedure on arraignment.

1. A defendant shall be arraigned in open Tribal Court whenever a complaint has been filed by a Tribal prosecutor. Arraignment consists of reading the charge, unless the defendant waived the reading, and supplying a copy of it to the defendant and calling on the defendant to plead to the charge.
2. If a defendant waives his or her right to counsel in writing, the court may arraign the defendant at the initial appearance.
3. Prior to accepting any plea at the time of arraignment, the presiding judge must:
   a. verify that the person appearing before the Tribal Court is the defendant named in the complaint, and that the defendant's true name appears on the complaint and if different from the name used on the complaint, order the complaint amended to reflect the true name;
   b. determine whether the defendant has a mental disorder that would prevent the defendant from understanding the charges, the penalties, or the effects of a plea, and, if the determination is that defendant has a mental disorder, the arraignment may be continued until the defendant is able to proceed; and

4. If the defendant is detained in jail or subject to conditions of release, the defendant shall be arraigned not later than 14 days after the date the complaint is filed in Tribal court, or 14 days after the date of initial appearance if no complaint has been filed prior to the initial appearance. If the defendant is not detained in jail or subject to conditions of release, the defendant shall be arraigned not later than 14 days after the appearance in Tribal court which next follows the filing of the complaint. If the defendant is not arraigned within the above time limits, the defendant shall be released without conditions.

2.7.3 Plea alternatives.

1. A defendant shall enter a plea of guilty, not guilty, or, if the judge agrees, no contest, to all charges each charge contained in the complaint. A plea of no contest may be accepted by a judge only after due consideration of the views of the parties and interest of the Tribes in the effective administration of justice.
2. The court may not accept a plea of guilty or no contest without first determining:
    a. that the plea is voluntary and not the result of force or threats or of promises apart from a plea agreement. The court shall also inquire as to whether the defendant's willingness to plead guilty results from prior discussions between the prosecutor and the defendant or the defendant's attorney;
    b. that the defendant understands the following: (I) the nature of the charge for which the plea is offered, any mandatory minimum penalty, the maximum penalty, and, when applicable, that the court may require the defendant to make restitution to the victim; (ii) the defendant will be giving up his or her right to a trial;
    c. that if the defendant pleads guilty in fulfillment of a plea agreement, the court is not required to accept the terms of the agreement and that the defendant may not be entitled to withdraw the plea if the agreement is not accepted; and
    d. that, in charges for which imprisonment is a possible penalty, there is a factual basis for the plea.
3. A defendant pleading not guilty must inform the judge at the time of arraignment if a jury trial is requested.
4. If a defendant voluntarily enters a plea of guilty the judge may impose a sentence at that time or, on the court's own motion or the request of either party, schedule a sentencing hearing in order to allow sufficient time for the involved parties to obtain any information deemed necessary for the imposition of a just sentence.
5. Prior to the imposition of any sentence, the judge shall allow the defendant an opportunity to inform the court of any extenuating or mitigating circumstances which should be considered by the court in imposing penalties.
6. With the approval of the court and the consent of the prosecutor, a defendant may enter a plea of guilty or no contest, reserving the right, on appeal from the judgment, to review the adverse determination of any specified pretrial motion. If the defendant prevails on appeal, the defendant must be allowed to withdraw the plea.

2.7.4 Record of arraignment. The Clerk of Court shall prepare and keep a record of all arraignment proceedings.

2.7.5 Plea agreement procedure.

1. A prosecutor and counsel for the defendant, or the defendant when acting pro se, may engage in discussions with a view toward reaching an agreement that, upon the entering of a plea of guilty to a charged offense or to a lesser or related offense, the prosecutor will do one of the following:
    a. move for dismissal of other charges; or
    b. make a recommendation, or agree not to oppose the defendant's request, for a particular sentence, with the understanding that the recommendation or request may not be binding on the court.
2. A plea bargain agreement may be entered into anytime prior to a verdict or finding of guilt by judge or jury.

3. Final plea bargain offers shall be given to the defendant no later than 8 working days prior to trial. Plea bargains entered into up to 5 days prior to trial will be reviewed by the court and approved if not unconscionable. After that time, plea bargains will receive heightened scrutiny with no assurance being given of the acceptability of such plea bargains.
4. If a plea agreement has been reached by the parties, the court shall, on the record, require a disclosure of the agreement in open court at the time the plea is offered.

2.7.6 Telephonic change of plea. In exceptional circumstances and at its discretion, the court may accept a defendant's change of plea through a recorded telephonic proceeding.

Part 8 - Pretrial Motions and Discovery

2.8.1 PRETRIAL DEFENSES AND OBJECTIONS.

1. Except for good cause shown, any defense objection, or request which is capable of determination without trial on the general issues must be raised before trial by motion to dismiss or for other appropriate relief. All motions must be in writing and must be supported by a statement of the relevant facts upon which the motion is being made unless otherwise directed by the judge.
2. Failure of a party to raise defenses or objections or to make requests that must be made prior to trial, except lack of jurisdiction or the failure of a complaint to state an offense which must be noticed by the court at any time during the pendency of a proceeding, constitutes a waiver of the defense, objection, or request. The court, for good cause shown, may grant relief from any waiver provided in this section.
3. Motions in Limine should be made at least 5 days before trial, unless good cause is shown.

2.8.2 Suppression of evidence.

1. A defendant aggrieved by an unlawful search and seizure may move to suppress as evidence anything obtained by the unlawful search and seizure. The motion must be filed at least 10 days before trial, unless good cause is shown for waiving this time restriction.
2. The motion must specify the evidence sought to be suppressed and the grounds upon which the motion is based.
3. When the motion to suppress challenges the admissibility of evidence obtained without a warrant, the prosecution has the burden of proving, by a preponderance of the evidence, that the search and seizure were valid.
4. If the motion is granted, the evidence is not admissible at trial.

2.8.3 Motion to suppress confession or admission.

1. A defendant may move to suppress as evidence any confession or admission given by her or him on the ground that it was not voluntary or that was otherwise obtained in violation of his or her rights.
2. The motion must be filed at least 10 days before trial, unless good cause is shown for waiving this time restriction.
3. If the allegations of the motion state facts which, if true, show that the confession or admission was not voluntarily made or was otherwise obtained in violation of the defendant's rights, the Tribal Court shall conduct a hearing on the merits of the motion. The prosecution must prove by a preponderance of the evidence that the confession or admission was not obtained in violation of the defendant's rights.
4. The issue of admissibility of the confession or admission may not be submitted to the jury. If the confession or admission is determined to be admissible, the circumstances surrounding the making of the confession or admission may be submitted to the jury as bearing upon the credibility or the weight to be given to the confession or admission.
5. If the motion to suppress is granted, the confession or admission may not be admitted into evidence by the prosecution at the time of trial.

2.8.4 Disclosure by prosecution.

1. At the time of the initial appearance, the prosecutor shall disclose to the defendant the name of the person, if any, against whom the offense was committed if not disclosed in the complaint.
2. At the arraignment or as soon thereafter as practicable the defendant may request notice of all evidence the prosecutor intends to use in the prosecution case-in-chief at trial.
3. Upon defendant's request, any of the following information or evidence which is within the possession, custody, or control of the Tribal Prosecutor is subject to disclosure and production and may be copied or photographed, as appropriate for the item, by the defendant:
    a. any relevant written or recorded statement made by the defendant while in the custody of the Tribes and of any person who will be tried with the defendant;
    b. the names, addresses, and statements of all persons whom the prosecutor may call as witnesses in the case in chief.
    c. the defendant's prior criminal record, if any;
    d. any books, papers, documents, photographs, tangible objects, drawings of buildings or places, or other physical or demonstrative evidence which is intended for use by the prosecution at trial;
    e. any written reports of or statements of experts who have personally examined the defendant or any evidence in the particular case, together with results of physical examinations, scientific tests or experiments, or comparisons; and
    f. all material or information that tends to mitigate or negate the defendant's guilt as to the offense charged or that would tend to reduce the defendant's potential sentence.
4. At the same time, the prosecutor shall inform the defendant of, and make available to the defendant for examination and reproduction, any written or recorded material or information within the prosecutor's control regarding:
    a. whether there has been any electronic surveillance of any conversation to which the defendant was a party;
    b. whether an investigative subpoena has been executed in connection with the case; and
    c. whether the case has involved an informant and, if so, the informant's identity.
5. Attorney work product of the Tribal Prosecutor's office is not subject to disclosure and production.
6. The Prosecution shall provide written notice of any evidence of other crimes, wrongs, or acts, that it intends to offer under Rule 404(b) of the Federal Rules of Evidence, at least two weeks prior to the close of discovery. The notice shall describe the evidence in sufficient detail to inform the Defendant of the date, time, place, and witnesses to the alleged incidents, and shall also state the purpose for which such evidence shall be offered.
7. The obligations imposed by this section are continuing.

2.8.5 Disclosure by defendant.

1. At any time after the filing of a complaint, the defendant, in connection with the particular offense charged, shall upon written request of the prosecutor and approval of the court:
    a. appear in a lineup;
    b. speak for identification by witnesses;
    c. be fingerprinted, palm printed, footprinted, or voiceprinted;
    d. pose for photographs not involving reenactment of an event;
    e. try on clothing;
    f. provide handwriting samples;
    g. permit the taking of samples of the defendant's hair, blood, saliva, urine, or other specified materials that involve no unreasonable bodily intrusions; and
    h. submit to reasonable physical or medical examination where the examination does not involve psychological or psychiatric evaluation.
2. Except as provided in **Section (4),** not later than the close of discovery upon request of the prosecution or at another time as the court for good cause may permit, the defendant or defendant's counsel shall make available to the prosecutor for testing, examination, or reproduction:
    a. the names, addresses, and statements of all persons, other than the defendant, whom the

defendant may call as witnesses in the defense case in chief;

b. the names and addresses of experts whom the defendant may call at trial, together with the results of their physical examinations, scientific tests, experiments, or comparisons, including all written reports and statements made by these experts in connection with the particular case;

c. all papers, documents, photographs, and other tangible objects that the defendant may use at trial.

3.a. At the close of discovery as set forth in the Pre-Trial Order, or at a later time as the Court shall so permit, the defendant shall provide the prosecutor with a written notice of the defendant's intention to introduce evidence at trial of good character or of any affirmative defenses.

b. The notice must specify for each defense the names and addresses of the persons, other than the defendant, whom the defendant may call as witnesses in support of the defense, together with all written reports or statements made by them, including all reports and statements concerning the results of physical examinations, scientific tests, experiments, or comparisons, except that the defendant need not include a privileged report or statement unless the defendant intends to use the privileged report or statement, or the witness who made it, at trial.

4. Attorney work product of defense counsel is not subject to disclosure or production.

5. The obligations imposed by this section are continuing.

2.8.6 Severance.

1. A defendant may move for severance of defendants or charges. Such motion shall be filed at least 10 days prior to trial unless otherwise directed by the Tribal Court.

2. If it appears that the defendant is prejudiced by a joinder of related prosecutions or defendants in a single charge, or by a joinder of separate charges or defendants for trial, the Tribal Court may order separate trials, grant a severance of defendants, or provide any other relief as justice may require.

2.8.7 Notice of Alibi.

1. At the time of the pretrial conference or order, the prosecutor shall provide a written statement of the time, date, and place at which the alleged offense was committed.

2. If a defendant intends to rely upon a defense of alibi, the defendant will so notify the prosecutor, in writing, within 10 days of receiving the information required by subsection (1).

3. Defendant's notice of alibi defense shall state the specific place or places where the defendant claims to have been at the time of the alleged offense and the names and addresses of the witnesses the defendant intends to call to establish such alibi.

2.8.8 Motion for Continuance. The defendant or the Tribes may file a written motion for continuance, or the court may continue the proceedings on its own motion. If a party so moves less than 10 days before a scheduled hearing or trial, the Tribal Court may require that the motion be supported by an affidavit, whether or not the motion is opposed by the adverse party. This section, however, shall be applied in a manner which insures criminal cases are tried with due diligence consistent with the rights of the defendant to a speedy trial.

2.8.9 Pretrial Conference.

1. Any party may move the Tribal Court for one or more conferences to consider such matters as will promote a fair and expedient trial.

2. In the interest of justice, the Tribal Court may order a pretrial conference based on its own motion.

3. At the conclusion of any pretrial conference, the presiding judge shall prepare and file a memorandum of the matters agreed upon. No admissions made by the defendant or defendant's counsel at the conference shall be used against the defendant unless the admissions are reduced to writing and signed by the defendant and the defendant's counsel.

4. In the interest of judicial economy, the Court may Order the parties to prepare a proposed Pretrial

Order, without a pretrial conference, for the Court's signature.

2.8.10 Pretrial Deferral.

1.a. At any time, the prosecutor and a defendant who has counsel or who has voluntarily waived counsel may agree to the deferral of a prosecution for a specified period of time based on one or more of the following conditions:
   i. that the defendant may not commit any offense;
   ii. that the defendant may not engage in specified activities, conduct, and associations bearing a relationship to the conduct upon which the charge against the defendant is based;
   iii. that the defendant shall participate in a supervised rehabilitation program, which may include treatment, counseling, training, or education;
   iv. that the defendant shall make restitution in a specified manner for harm or loss caused by the offense; or
   v. any other reasonable conditions, including voluntary exclusion from the reservation.

b. The agreement must be in writing, must be signed by the parties, and must state that the defendant waives the right to speedy trial for the period of deferral. The agreement may include stipulations concerning the admissibility of evidence, specified testimony, or dispositions if the deferral of the prosecution is terminated and there is a trial on the charge.

c. The prosecution must be deferred for the period specified in the agreement unless there has been a violation of its terms.

d. The agreement must be terminated and the prosecution automatically dismissed with prejudice upon expiration and compliance with the terms of the agreement.

2.8.11 Subpoenas. A Judge of the Tribal Court has the power to issue subpoenas to compel the attendance of witnesses and the production of documents either on the Court's own motion or on the request of any party to a case, which shall bear the signature of the Judge issuing the subpoena. The subpoenas may direct the attendance of witnesses or the production of documents or evidence at a specified date, time, and location. Subpoenas under this section may be issued for purposes of discovery, for pretrial hearing, or for a trial or post trial proceeding. In the absence of a justification satisfactory to the court, a person who fails to obey a subpoena may be deemed to be in contempt of court and a bench warrant may be issued for his or her arrest.

2.8.12 Material Witness

1. Warrant. On motion of the prosecuting authority or the defendant, the court may issue a warrant, subject to reasonable bail, for the arrest of a material witness. The warrant shall issue only on a showing, by affidavit or on the record in open court, that the testimony of the witness is material and that:
   a. The witness has refused to submit to a deposition ordered by the court; or
   b. The witness has refused to obey a lawfully issued subpoena; or
   c. It may become impracticable to secure the presence of the witness by subpoena.

Unless otherwise ordered by the court, the warrant shall be executed and returned as in 2.4.4.

2. Hearing. After the arrest of the witness, the court shall hold a hearing no later than the next court day after the witness is present in the county from which the warrant issued. The witness shall be entitled to be represented by a lawyer.

3. Release/Detention. Upon a determination that the testimony of the witness is material and that one of the conditions set forth in section 1 exists, the court shall set conditions for release of the witness. A material witness shall be released unless the court determines that the testimony of such witness cannot be secured adequately by deposition and that further detention is necessary to prevent a failure of justice. Release of a material witness may be delayed for a reasonable period of time until the testimony or deposition of the witness can be taken.

Part 9 - Trial

2.9.1 RIGHT TO A JURY TRIAL.

1. A defendant charged with a Class B, Class C, Class D, or Class E offense has a right to trial by jury of six fair and impartial jurors, unless the prosecutor, prior to plea, informs the defendant that there shall be no jail time imposed in the event of a successful prosecution.
2. A defendant may waive the right to a jury trial in a written voluntary statement to the Court.
3. A defendant must maintain contact with his or her counsel. By failing to maintain contact with counsel, a defendant waives his or her right to a jury trial.

2.9.2 Time for Trial Priority on the Tribal Court Calendar.

1. Prosecutions against defendants held in custody must be disposed of in advance of prosecutions against defendants released on bail, unless otherwise directed by the Tribal Court. Criminal actions take precedence over civil actions when determining a hearing or trial date.
2. A defendant not released from jail pending trial shall be brought to trial not later than 60 days after the date of arraignment. A defendant released from jail whether or not subjected to conditions of release pending trial shall be brought to trial not later than 90 days after the date of arraignment.
3. The following extensions of time limits apply notwithstanding the provisions of section 2.

a. Revocation of Release. A defendant who has been released from jail pending trial, pursuant to an order imposing conditions of release, but whose release is then revoked by order of the court, shall be brought to trial within such a time period that the defendant spends no more than a total of 60 days in jail following the date of arraignment, and in any event within such a time period that the defendant is tried not later than a total of 90 days after the date of arraignment unless the time period is otherwise extended by this rule.

b. Failure To Appear. When a defendant who has already been arraigned fails to appear for any trial or pretrial proceeding at which the defendant's presence is required, the defendant shall be brought to trial not later than 60 days after the date upon which the defendant is located on the Reservation and the defendant's presence has been made known to the court on the record, if the defendant is thereafter detained in jail, or not later than 90 days after such date if the defendant is not detained in jail whether or not the defendant is thereafter subjected to conditions of release.

c. Five-Day Extensions. When a trial is not begun on the date set because of unavoidable or unforeseen circumstances beyond the control of the court or the parties, the court, even if the time for trial has expired, may extend the time within which trial must be held for no more than 5 days exclusive of Saturdays, Sundays, or holidays unless the defendant will be substantially prejudiced in his or her defense. The court must state on the record or in writing the reasons for the extension. If the nature of the unforeseen or unavoidable circumstance continues, the court may extend the time for trial in increments of not to exceed 5 days exclusive of Saturdays, Sundays, or holidays unless the defendant will be substantially prejudiced in his or her defense. The court must state on the record or in writing the reasons for the extension arraigned.

d. Excluded Periods. The following periods shall be excluded in computing the time for arraignment and the time for trial: (1) All proceedings relating to the competency of a defendant to stand trial, terminating when the court enters a written order finding the defendant to be competent; (2) Preliminary proceedings and trial on another charge; (3) The time during which a defendant is detained in jail or prison by authorities other than the Tulalip tribes and the time during which a defendant is subjected to conditions of release not imposed by a court of the Tulalip Tribes; (7) All proceedings in juvenile court.

e. Continuances. Continuances or other delays may be granted as follows: (1) Upon written agreement of the parties which must be signed by the defendant or all defendants. The agreement shall be effective when approved by the court on the record or in writing. (2) On motion of the Tribal prosecutor, the court or a party, the court may continue the case when required in the administration of justice and the defendant will not be substantially prejudiced in the presentation of the defense. The motion must be filed on or before the date set for trial or the last day of any continuance or extension granted pursuant to this rule. The court must state on the record or in writing the reasons for the continuance.

f. Waiver. A defendant may waive his or her time for trial rights. A waiver shall be in writing and shall

be signed by the defendant. The waiver shall be to a date certain beyond the current expiration date as calculated pursuant to this rule or for a period of days beyond the current expiration date.

2.9.3 Questions of Law and Fact.

1. Issues of fact shall be submitted to the jury, unless a defendant has waived the right to a jury trial. Where there is no jury, issues of fact shall be submitted to the judge.

All questions of law must be decided by the judge.

2.9.4 Rules of Evidence in Criminal Cases. Unless otherwise directed by a specific code provision, the Federal Rules of Evidence apply in criminal actions. Privileges will be those recognized under Tribal Law. For purposes of attacking the credibility of a witness under Federal Evidence Rule 609, evidence of convictions of a crime in Tribal Court may be admitted if the conviction was for a crime punishable by imprisonment of 30 days or more.

2.9.5 Trial Preparation Time. The defendant is entitled to reasonable time, as determined by the judge and consistent with Section 2.9.2, to prepare for trial after entering a plea of not guilty.

2.9.6 Burden of Proof. A plea of not guilty requires that the prosecution prove beyond a reasonable doubt that the crime alleged was committed and that the defendant committed every necessary element of it.

2.9.7 Order of Trial.

1. In a jury trial, after selecting and empaneling the jurors, the Tribal Court shall state the nature of the charges and generally instruct the jurors as to their duties.
2. Unless waived, the prosecution and the defense will be afforded an opportunity to make an opening statement, prior to the presentation of any evidence or testimony. The defense may reserve her or his opening statement until after the prosecution has presented its case in chief.
3. After presenting the opening statement(s), the prosecution must offer evidence supporting the allegations contained in the complaint. The defense shall be given an opportunity to cross-examine any witness called by the prosecution.
4. After the prosecution has rested its case, the defense may give any reserved opening statement and present any defenses or evidence relating to the allegations contained in the complaint. The prosecution shall be given an opportunity to cross-examine any witness called by the defense.
5. Rebuttal evidence may be presented by the prosecution after the conclusion of the defense case when appropriate, and, if necessary, surrebuttal evidence may be offered by the defense.
6. No new evidence may be presented after the prosecution and the defense have rested their cases, unless allowed by the judge in the interest of justice.
7. In a trial by jury, after the close of evidence and before the closing statements arguments are given, the instructions on the law of the case, as submitted in writing by the prosecution and defense shall be considered singly by the court and each one shall be:
   a. given as requested or proposed by counsel,
   b. refused based on stated grounds, or
   c. given with modification by the judge to the jury.

   All instructions shall be in writing and filed as part of the record.
8. After the judge reads the instructions to the jury and gives the jury a copy of the same, the prosecution and the defense may make a closing argument. The prosecution precedes the defense and may also make a rebuttal closing argument.
9. The jury, or the judge if the case is tried without a jury, shall render a verdict upon the conclusion of the case. If the case is tried to a judge, the verdict shall set forth the court's findings of fact, conclusions of law and a judgment of guilty or not guilty. If the case is tried to a jury, the verdict shall be guilty or not guilty in accordance with the facts and the jury instructions.

2.9.8 Insufficient Evidence. If the Tribal Court determines at the close of the prosecution's case in chief, or at the conclusion of the case, that the evidence presented is insufficient to sustain a conviction for the charged offense or offenses, the Tribal Court may, on its own motion or on the motion of the defense, dismiss the action and discharge the defendant. No new trial may be granted unless the judgment of acquittal is vacated or reversed on appeal.

Part 10 - Juries

2.10.1 MOTION TO DISCHARGE A JURY PANEL.

1. Any objection to the manner in which the venire has been selected or drawn shall be raised by motion to discharge the jury. The motion shall be made at least 7 days prior to the trial date.
2. The motion shall be made in writing supported by an affidavit which shall state facts which show that the venire was improperly selected or drawn.
3. If the motion states facts which would show that the venire was improperly selected or drawn, it shall be the duty of the Tribal Court to conduct a hearing. The burden of proof shall be on the movant.
4. If the Tribal Court finds that the jury was improperly selected or drawn, the court shall order the jury discharged and the selection or drawing of a new jury.

2.10.2 Examination of Prospective Jurors.

1. After summoning jurors and before trial, the Clerk of the Court shall notify the Court and counsel of the names of the members of the jury pool appearing for selection.
2. In selecting a jury from among the panel members, the initial questioning of the jurors shall be conducted by the judge in order to determine whether each prospective juror is capable of being fair and impartial. Questions to be asked by the court include whether a panel member:
    a. is directly related to any person involved in the action, including, but not limited to, the defendant, defense counsel, arresting officer, alleged victim, or any prospective witness;
    b. is or has been involved in any business, financial, professional, or personal relationship with a party or alleged victim;
    c. has had any previous involvement in a civil or criminal lawsuit or dispute with a party or alleged victim;
    d. has a financial or personal interest in the outcome of the action before the court;
    e. has formed an opinion as to the defendant's guilt; or
    f. has a belief that the punishment fixed by law is too severe for the offense charged.
3. Any panel member whom the Tribal Court determines incapable of acting with impartiality and without prejudice to the rights of either party shall be excused.
4. After questioning by the judge, the prosecutor and defendant or defense counsel may question the jury panel members to determine impartiality. Either party may question the panel members concerning the nature of the burden of proof in criminal cases and the presumption of innocence. The judge may limit the prosecutor's and defendant's or defense counsel's examination of a panel member when the judge believes such examination to be improper or when the judge determines that the examination is or has become unacceptably time consuming.

2.10.3 Challenges.

1. The prosecution and defense shall have unlimited challenges for cause. Each challenge must be tried and determined by the Court at the time the challenge is made.

2. The prosecution and defense shall each have two peremptory challenges. When defendants are tried together each additional defendant shall entitle the prosecution and defense to one additional peremptory challenge each.

3. All challenges must be made to the Tribal Court before the jury is sworn. When a potential challenge for cause is discovered after the jury is sworn and before the introduction of any evidence, the Tribal Court may allow a challenge for cause to be made.

2.10.4 Conduct of Jury During Trial.

1. Once empaneled, jurors shall be instructed by the judge that it is their duty not to converse among themselves or with anyone else on any subject connected with the trial, or to form or express any opinion thereon, until the issues of the case are finally submitted to them.
2. At each adjournment recess prior to submission of the case to the jury, the judge shall instruct the jurors as to whether they may separate or must remain in the care of the bailiff or other proper officer of the court.

2.10.5 View of Relevant Place or Property.

1. Upon request by the prosecution or defense, the Court may allow the jury to view any place or property deemed pertinent to the just determination of the case.
2. If viewing of a place or property is deemed appropriate, the Court shall place the jury under the custody of the bailiff, or other proper officer of the court, who shall then transport the jury to the viewing place.
3. The place or property will be shown to the jury by a person appointed by the court for that purpose, and the jurors may personally inspect the same.
4. The bailiff, or other proper officer of the court, must insure that no person speaks or otherwise communicates with the jury, on any subject connected with the trial, while viewing the place or property or traveling to or from the viewing site.
5. After the jury has viewed the place or property, the bailiff, or other proper officer of the court, shall return the jurors to the courtroom without unnecessary delay or at a specified time, as directed by the court.

2.10.6 Jury Instructions.

1. General instructions may be furnished by the Tribal Court. When either the defendant or the prosecutor desires a special instruction to be given to the jury, such proposed instruction shall be reduced to writing, signed by the party offering the instruction and delivered to the judge at least 5 days before trial unless a different time is established by the judge. For good cause shown, the parties may supplement or withdraw instructions at the close of evidence.
2. All jury instructions shall adequately inform the jurors of:
    a. which decisions are made by the jury and which by the presiding judge;
    b. the issues of fact in the case;
    c. the rules of law to be applied to the issues of fact;
    d. the burden of proof with respect to each issue of fact; and
    e. the proof needed to discharge that burden.
3. The party not offering a proposed instruction shall be allowed reasonable opportunity to examine the proposed instruction and object to it. The objection must specifically state on what grounds the instruction is not an accurate statement of the law or is not an appropriate instruction for this particular case and, therefore, should not be given.
4. A dispute regarding a proposed jury instruction must be settled outside of the jury's presence by the court which may hold a settlement hearing.
5. A record must be made at a hearing to settle instructions.
6. A party may not appeal as error any portion of the instructions or omission from the instructions unless an objection was made specifically stating the matter objected to, and the grounds for the objection, at the settlement of instructions or in writing prior to a settlement hearing.
7. The presence of the defendant is not required during the settlement of instructions.
8 After all evidence has been presented, and before closing arguments, the court shall give both

general and specific instructions to the jurors.

9. For the record, but not for the jury, the court shall mark or endorse each instruction in such a manner that it shall distinctly appear what proposed instructions were rejected, what were given in whole and what were modified, together with the court's reasons for giving as requested, as modified, or refusing a proposed instruction.
10. All proposed instructions are part of the court record. All objections to jury instructions must be noted on the court record, as well as the Tribal Court's reasons for either giving as requested, as modified, or refusing a proposed instruction.

2.10.7 Jury Deliberations.

1. After closing arguments, the court shall commit the jury to the care of a bailiff or other officer of the court who shall keep the jurors together and prevent communication between the jurors and others.
2. Upon retiring to deliberate, the jurors shall select a juror as foreperson.
3. After the jury has retired for deliberation, if there is any disagreement among the jurors as to the testimony or if the jurors desire to be informed on any point of law arising in the cause, they shall notify the bailiff or the officer appointed to keep them together, who shall then notify the court. The information requested may be given, in the discretion of the court, after consultation with the parties.

2.10.8 Items that may be taken into Jury Room. Upon retiring for deliberation, the jurors may take with them the written jury instructions read by the court, notes of the proceedings taken by themselves, and all exhibits that have been received as evidence in the cause that in the opinion of the court will be necessary.

2.10.9 Activity of the Court During Jury's Absence. While the jury is absent, the court may adjourn or conduct other business, but it must be open for every purpose connected with the cause submitted to the jury until a verdict is returned or the jury discharged.

2.10.10 Form of verdict.

1. The jury shall return a verdict as instructed by the court and for each offense charged. The verdict must be unanimous in all criminal actions. The verdict must be signed by the foreperson and returned by the jury to the judge in open court.
2. When two or more defendants are involved in the case before the jury, the jurors may reach a verdict regarding any one of the defendants. If the jury cannot agree with respect to all the defendants, the defendant or defendants as to whom it does not agree may be tried again.

2.10.11 Polling the Jury. When a verdict is returned, but before it is recorded, the jury shall be polled at the request of any party or upon the court's own motion. If the results of the poll show that the verdict does not reflect unanimous concurrence by each juror, the jury may be directed to return for further deliberations or may be discharged at the court's discretion.

2.10.12 Conviction of lesser included Offense.

1. When it appears to the jury beyond a reasonable doubt that the defendant has committed an offense but there is reasonable doubt as to whether he or she is guilty of a given offense or one or more lesser included offenses as provided in subsections (2), (3), and (4) of this section, he or she may only be convicted of the greatest included offense about which there is no reasonable doubt.
2. The defendant may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included in the offense charged.
3. A lesser included offense instruction must be given when there is a proper request by one of the

parties and the jury, based on the evidence, could be warranted in finding the defendant guilty of a lesser included offense.

4. When a lesser included offense instruction is given, the court shall instruct the jury that it must reach a verdict on the crime charged before it may proceed to a lesser included offense. Upon request of the defendant at the settling of instructions, the court shall instruct the jury that it may consider the lesser included offense if it is unable after reasonable effort to reach a verdict on the greater offense.

2.10.13 Discharging Jurors.

When the jury has reached a verdict or has determined that it shall be is unable to either acquit or find the defendant guilty, even with additional deliberation, the court shall discharge the jurors from service.

2.10.14 Motion for a New Trial.

1. Within 20 days of a guilty verdict, the defendant may file with the court, and serve upon the prosecution, a written motion for a new trial. The motion must specify the grounds for a new trial.
2. After hearing the motion for a new trial, the court may, in the interest of justice:
   a. deny the motion;
   b. grant a new trial; or
   c. modify or change the verdict or finding by finding the defendant guilty of a lesser included offense or not guilty.
3. The granting of a new trial places the parties in the same position as if there had been no trial.

Part 11 - Sentence and Judgment

2.11.1 RENDERING JUDGMENT AND PRONOUNCING SENTENCE.

1. This Part controls all sentencing in all circumstances. Changes in Washington Law do not apply unless expressly adopted by the Board of Directors.
2. The judgment shall be rendered in open court.
3. If the verdict or finding is not guilty, judgment shall be rendered immediately and the defendant shall be discharged from custody or from the obligation of his or her bail bond.

4a. If the verdict or finding is guilty, sentence shall be pronounced and judgment rendered within a reasonable time.

b. When the sentence is pronounced, the judge shall clearly state for the record his or her reasons for the sentence imposed.

2.11.2 Sentencing Considerations.

1. Sentences imposed upon those convicted of crime must be based primarily on the following:
   a. the crime committed;
   b. the prospects of rehabilitation of the offender, including the possible resources and needs of the offender's dependents, if any;
   c. the circumstances under which the crime was committed;
   d. the criminal history of the offender; and
   e. alternatives to imprisonment of the offender.
   f. the ability of the defendant to pay a fine.

2.11.3 Imposition of Sentence.

1. No sentence shall be imposed until:
   a. the offender and the offender's counsel have had an opportunity to examine any pre-sentence report and to cross-examine the preparer of such report on the basis for any sentencing recommendations contained in the report,
   b. the prosecution and defense have had an opportunity to present evidence, witnesses,

and an argument regarding the appropriateness of a sentencing option; and

c. the offender has had the opportunity to speak on his or her own behalf and to present any information likely to mitigate the pending sentence.

2. Sentencing shall be imposed on all offenses pursuant to Tribal law. To the extent that any Washington statute incorporated into Tribal law provides a penalty that conflicts with Tribal sentencing law, Tribal sentencing law will control.

3. An offender found guilty of an offense may be sentenced to one or more of the following penalties:

   a. deferred imposition of sentence with reasonable restrictions and conditions monitored by the Tribal Probation Officer, and with the following characteristics:
      i. the record of the offense shall be expunged upon satisfactory performance by the offender of the restrictions and conditions of deferral for a period not to exceed one year for Class A, Class B, Class C, and Class D offenses and three years for a Class E offense, and
      ii. imposition of sentence will occur immediately upon violation of a restriction or condition of the deferral;
   b. suspended execution of all or part of a sentence for one year for Class A, Class B, Class C, and Class D offenses and three years for a Class E offense, with the offender being placed on probation under reasonable restrictions and conditions for the period of suspension, and with a violation of a restriction or condition resulting in execution of the suspended portion of the sentence;
   c. imprisonment for a period of time not to exceed the maximum permitted for the offense;
   d. a fine in an amount not to exceed the maximum permitted for the offense;
   e. community service;
   f. any diagnostic, therapeutic, or rehabilitative measures, treatments, or services deemed appropriate;
   g. restitution to a victim of an offense for which the offender was convicted; or
   h. a person may be allowed to serve home arrest at the person's expense, but will not be eligible for parole.

4. The court may impose any or all of the following restrictions or conditions as part of a sentence, suspended or otherwise, or a deferred imposition of sentence, for rehabilitative purposes or to protect the Reservation community:
   a. prohibiting the offender from owning or carrying a dangerous weapon;
   b. restricting the offender's freedom of movement;
   c. restricting the offender's freedom of association;
   d. requiring the offender, if employed, to remain employed and, if unemployed, to actively seek employment; and
   e. any requirement or limitation intended to improve the mental or physical health or marketable skills of the offender.

5. Unless the Tribal Court otherwise directs in its pronouncement of sentence, all sentences stemming from offenses occurring in the same transaction or course of conduct shall run concurrently and not consecutively.

6. Any monies paid to the Tribes or to the victim of an offense as a result of this provision shall be paid through the Clerk of Court.

7. Where the Court in its discretion deems it appropriate, a form of traditional punishment may be imposed in addition to or in place of any punishment provided in this Code.

2.11.4 Execution of Sentence.

1. If the offender is sentenced to imprisonment, the court shall deliver a Detention Order or Judgment outlining the specific requirements of detention to the Tribal law enforcement officers serving as Tribal jailers. The offender shall be discharged from custody by the Tribal law

enforcement officers after satisfactorily fulfilling the conditions of the imposed sentence or upon earlier order of the court.

2. If judgment is rendered imposing a fine only, the offender must be discharged after making acceptable arrangements to pay the fine within the period of time specified by the court. The Tribal Court may also allow the offender to perform community service to offset any fine or allow the offender to be imprisoned until the fine is satisfied, applying $50.00 for every day served, unless a different amount is otherwise established by Board of Directors. If no such permission is included in the sentence, the fine shall be paid prior to formal release.
3. If judgment is rendered imposing both imprisonment and a fine, the offender shall be discharged after fulfilling the requirements of subsections (1) and (2) of this section.
4. The Court may in its discretion grant temporary release from custody under any conditions the Court deems appropriate.

2.11.5 Restitution.

1. When restitution is ordered, the court shall specify the amount, method and payment schedule imposed upon the offender. Before restitution may be ordered, the defendant shall receive notice of the amount and terms requested and shall be entitled to a hearing upon his or her timely request.
2. The fact that restitution was ordered is not admissible as evidence in a civil action and has no legal effect on the merits of a civil action.
3. Except as otherwise provided in this subsection, restitution paid by an offender to an injured person must be deducted from any monetary award granted to said injured person in a civil action arising out of the facts or events which were the basis for the restitution. The court trying the civil action shall determine the amount of any reduction due to payment of restitution by an offender under this section. However, in the event that criminal and civil actions against an offender arising from the same transaction or events are heard in courts of different jurisdictions, one of which is the Tribal Court, the Tribal Court shall adjust offender's payments within its jurisdictional control for restitution or otherwise to assure that an injured party does not recover twice for the same harm.
4. An offender may petition for modification of sentence imposing restitution and request a hearing on the matter. The injured person shall be given notice by the offender of any proposed modifications and afforded an opportunity to be heard on the proposed modification.

2.11.6 Payment of Fines and Restitution.

1. All monies collected as the result of a fine imposed by the Tribal Court shall be paid through the Clerk of Court. Upon receiving the monies, the Clerk shall:
    a. issue a receipt to the paying person;
    b. credit the account of the offender, noting whether the fine is paid in full or what balance, if any, remains due; and
    c. transfer the monies to the general fund of the Tribes, unless otherwise specifically directed by a provision of this Code.
2. All monies collected for restitution shall be paid through the Clerk of Court. Upon receiving the monies the Clerk shall:
    a. issue a receipt to the paying person;
    b. credit the account of the offender, noting whether the fine is paid in full or what balance, if any remains due; and
    c. transfer the monies to the person to whom restitution is to be paid.

2.11.7 Revocation of Parole or Suspended or Deferred Sentence.

1. If a petition requesting revocation has been filed and a revocation hearing held, the Tribal Court may revoke a defendant's parole or suspension or deferral of sentence if a

preponderance of the evidence shows the imposed conditions of the parole, or suspension, or deferral of sentence have been violated.

2. A petition seeking revocation of a parole or a suspended sentence or imposition of a sentence previously deferred must be filed during the period of parole, suspension or deferral, or within 5 days after the period of parole, suspension, or deferral ends if the offender's violation of a condition of parole or probation occurred within the final 48 hours prior to the end of the period. Expiration of a parole or the time ordered under a suspended or deferred sentence prior to a hearing for revocation does not deprive the Tribal Court of jurisdiction to rule on the revocation petition.
3. This is the exclusive remedy for violation of a condition of parole, or suspended or deferred sentence.

2.11.8 Dismissal and Expungement after Deferred Sentence. Whenever the court has deferred the imposition of sentence and after expiration of the period of deferral and after the defendants successful completion of any conditions of deferral, upon motion by the court, the defendant, or the defendant's counsel, the court shall allow the defendant to withdraw his or her plea of guilty or strike the verdict or judgment expunging the court records of all record of the
proceedings by entering an order of dismissal of charges and expungement, inscribing each record of the proceedings with the word "Expunged" and sealing the file.

2.11.9 Failure to Pay a Fine or Restitution.

1. If a defendant sentenced to pay a fine or restitution fails to make payment as ordered, the Court or the Prosecutor may move that the offender show cause why the offender's nonpayment should not be treated as contempt of court. Notice of a show cause hearing on the contempt charge shall be served on the offender by law enforcement officers at least five days prior to the date set for hearing. Notice shall also be served on the victim if the show cause was issued for failure to pay restitution.
2. Unless the offender shows that the nonpayment was not attributable to an intentional refusal to obey a Tribal Court order or the offender's failure to make a good faith effort to make the ordered payments, the Tribal Court may find the offender in contempt and order the person incarcerated until the fine or restitution is satisfied. Time served shall be credited against the fine at the rate of $50.00 per day unless otherwise set by the Board of Directors.
3. If the Court determines that the offender's nonpayment does not constitute contempt, the Court may modify the original sentence, judgment, or order, allowing the offender additional time to pay the fine or restitution or reducing the amount owed.

2.11.10 Credit for Time Served. If a defendant has served any of the defendant's sentence under a commitment based upon a judgment that is subsequently declared invalid or that is modified during the term of imprisonment, the time served must be credited against any subsequent sentence received upon a new commitment for the same criminal act or acts. This does not include time served pursuant to Section 2.6.10(1)©).

2.11.11 Credit for Incarceration Prior to Conviction.

1. Any person incarcerated on a bailable offense and against whom a judgment of imprisonment is rendered must be allowed credit for each day of incarceration prior to or after conviction, except that the time allowed as a credit may not exceed the term of the prison sentence rendered. This does not include time served pursuant to Section 2.6.10(1)©).
2. Any person incarcerated on a bailable offense who does not supply bail and against whom a fine is levied on conviction of the offense must be allowed a credit for each day of incarceration prior to conviction, except that the amount allowed or credited may not exceed the amount of the fine. The daily rate of credit for incarceration is $50.00 per day unless otherwise set by the Tribal Council.

This does not include time served pursuant to Section 2.6.10(1)©).

Part 12 - Traffic Infraction Procedures

2.12.1 NOTICE OF TRAFFIC INFRACTION.

1. A law enforcement officer has the authority to issue a notice of traffic infraction:
   a. When the infraction is committed in the officer's presence;
   b. When the officer is acting upon the request of a law enforcement officer in whose presence the traffic infraction was committed;
   c. When a law enforcement officer has probable cause to believe that a person has committed or is committing a violation of any of the following traffic infraction laws: (I) 3.13.6, relating to driving a motor vehicle while operator's license is suspended or revoked; (ii) 3.13.7, relating to operating a motor vehicle in a negligent manner.
   d. If an officer investigating at the scene of a motor vehicle accident has reasonable cause to believe that the driver of a motor vehicle involved in the accident has committed a traffic infraction.
2. The Tribal Court may issue a notice of traffic infraction upon receipt of a written statement of the officer that there is reasonable cause to believe that an infraction was committed.
3. If any motor vehicle without a driver is found parked, standing, or stopped in violation of this title or an equivalent administrative regulation or local law, ordinance, regulation, or resolution, the officer finding the vehicle shall take its registration number and may take any other information displayed on the vehicle which may identify its user, and shall conspicuously affix to the vehicle a notice of traffic infraction.

2.12.2 Response to Notice.

1. Any person who receives a notice of traffic infraction shall respond to such notice as provided in this section within fifteen days of the date of the notice.
2. If the person determined to have committed the infraction does not contest the determination the person shall respond by completing the appropriate portion of the notice of infraction and submitting it, either by mail or in person, to the Tribal Court. A check or money order in the amount of the penalty prescribed for the infraction must be submitted with the response. When a response which does not contest the determination is received, an appropriate order shall be entered in the court's records.
3. If the person determined to have committed the infraction wishes to contest the determination the person shall respond by completing the portion of the notice of infraction requesting a hearing and submitting it, either by mail or in person, to the court specified on the notice. The court shall notify the person in writing of the time, place, and date of the hearing, and that date shall not be sooner than seven days from the date of the notice, except by agreement.
4. If the person determined to have committed the infraction does not contest the determination but wishes to explain mitigating circumstances surrounding the infraction the person shall respond by completing the portion of the notice of infraction requesting a hearing for that purpose and submitting it, either by mail or in person, to the Tribal Court. The court shall notify the person in writing of the time, place, and date of the hearing.

5.a. In hearings conducted pursuant to subsections (3) and (4) of this section, the court may defer findings, or in a hearing to explain mitigating circumstances may defer entry of its order, for up to one year and impose conditions upon the defendant the court deems appropriate. Upon deferring findings, the court may assess costs as the court deems appropriate for administrative processing. If at the end of the deferral period the defendant has met all conditions and has not been determined to have committed another traffic infraction, the court may dismiss the infraction.

b. A person may not receive more than one deferral within a seven-year (7) period for traffic infractions for moving violations and more than one deferral within a seven-year period for traffic infractions for nonmoving violations.

6. If any person issued a notice of traffic infraction:

a. Fails to respond to the notice of traffic infraction as provided in subsection (2) of this section; or
b. Fails to appear at a hearing requested pursuant to subsection (3) or (4) of this section; the court shall enter an appropriate order assessing the monetary penalty prescribed for the traffic infraction and any other penalty authorized by this code.

2.12.3 Hearings -Counsel.

1. Any person subject to proceedings under this chapter may be represented by counsel, at his or her own expense.
2. The attorney representing the Tribes may appear in any proceedings under this chapter but need not appear, notwithstanding any statute or rule of court to the contrary.

2.12.4 Hearings, Contesting Determination that Infraction Committed, Appeal.

1. A hearing held for the purpose of contesting the determination that an infraction has been committed shall be without a jury.
2. The court may consider the notice of traffic infraction and any other written report made under oath submitted by the officer who issued the notice or whose written statement was the basis for the issuance of the notice in lieu of the officer's personal appearance at the hearing. The person named in the notice may subpoena witnesses, including the officer, in accordance with the procedures in this code, and has the right to present evidence and examine witnesses present in court.
3. The burden of proof is upon the Tribes to establish the commission of the infraction by a preponderance of the evidence.
4. After consideration of the evidence and argument the court shall determine whether the infraction was committed. Where it has not been established that the infraction was committed an order dismissing the notice shall be entered in the court's records. Where it has been established that the infraction was committed an appropriate order shall be entered in the court's records.

2.12.5 Hearings, Explanation of Mitigating Circumstances.

1. A hearing held for the purpose of allowing a person to explain mitigating circumstances surrounding the commission of an infraction shall be an informal proceeding. The person may not subpoena witnesses. The determination that an infraction has been committed may not be contested at a hearing held for the purpose of explaining mitigating circumstances.

2. After the court has heard the explanation of the circumstances surrounding the commission of the infraction an appropriate order shall be entered in the court's records.
3. There may be no appeal from the court's determination or order.

2.12.6 Monetary Penalties.

1. A person found to have committed a traffic infraction shall be assessed a monetary penalty in accordance with section 3.13.16 of this Ordinance or any fine schedule adopted by the Tribal Court.
2. There shall be a penalty of twenty-five dollars for failure to respond to a notice of traffic infraction except where the infraction relates to parking.
3. Whenever a monetary penalty is imposed by a court under this chapter it is immediately payable. If the person is unable to pay at that time the court may, in its discretion, grant an extension of the period in which the penalty may be paid.

2.12.7 Order of Court - Civil Nature - Waiver, Reduction, Suspension of Penalty.

1. An order entered after the receipt of a response which does not contest the determination, or after it has been established at a hearing that the infraction was committed, or after a hearing for the

purpose of explaining mitigating circumstances is civil in nature.

2. The court may include in the order the imposition of any penalty authorized by the provisions of this chapter for the commission of an infraction. The court may, in its discretion, waive, reduce, or suspend the monetary penalty prescribed for the infraction. At the person's request the court may order performance of a number of hours of community service in lieu of a monetary penalty, at the rate of the then minimum wage per hour.

2.12.8 Presumption regarding Stopped, Standing, or Parked vehicles.

1. In any traffic infraction case involving a violation of this title or equivalent administrative regulation or local law, ordinance, regulation, or resolution relating to the stopping, standing, or parking of a vehicle, proof that the particular vehicle described in the notice of traffic infraction was stopping, standing, or parking in violation of any such provision of this title or an equivalent administrative regulation or local law, ordinance, regulation, or resolution, together with proof that the person named in the notice of traffic infraction was at the time of the violation the registered owner of the vehicle, shall constitute in evidence a prima facie presumption that the registered owner of the vehicle was the person who parked or placed the vehicle at the point where, and for the time during which, the violation occurred.

TRIBAL OFFENSES

TITLE III

Part 1 - General Preliminary Provisions

3.1.1 PURPOSE AND CONSTRUCTION. The provisions of this Chapter shall be construed in accordance with Tribal customs as well as to achieve the following general principles and purposes:

1. to forbid and prevent the commission of offenses and give fair warning of conduct which is declared to be an offense;
2. to adequately define the conduct and mental state which constitute an offense and to safeguard permitted conduct;
3. to prescribe penalties which are proportionate to the seriousness of the offense and which permit recognition of differing rehabilitative needs of individual offenders while at the same time recognizing the need of the entire Reservation Community to protect itself from offenders;
4. to prevent arbitrary and oppressive treatment of persons accused or convicted of offenses and to promote the correction and rehabilitation of such persons; and
5. to protect any Tribal member or other person residing on the Reservation whose health or welfare may be adversely affected or threatened due to abuse, neglect or exploitation by family, household members, or other person in a legal or contractual position of providing physical, mental, or medical assistance and support to the affected person.

3.1.2 Civil Actions not Barred. The Code of Tribal Offenses does not bar, suspend, or otherwise affect any right or liability to damages, penalty, forfeiture, or other remedy authorized by law to be recovered. Civil injury is not merged into the criminal offense.

3.1.3 Exclusiveness of Offenses. No conduct constitutes an offense unless so declared by this Code of Tribal Offenses, by any Tribal ordinance, or by specific Washington law incorporated by reference into this Code of Tribal Offenses. The elements of any offense as contained in this code are the sole elements required for conviction in Tribal Court. Extraneous elements required by other jurisdictions shall not be considered by the judge or jury in reaching a verdict of guilt or innocence. However, this provision does not affect the power of the Tribal Court to punish for contempt or to employ any sanction authorized by law for the enforcement of an order, civil judgment, or decree.

3.1.4 Prosecution for Multiple Offenses. When the conduct of an offender establishes the commission of more than one offense, the offender may be prosecuted separately for each offense. The offender, however, may not be convicted of more than one offense if:

1. one offense is included in the other;
2. one offense consists only of conspiracy or some other form of preparation for committing the offense;
3. inconsistent findings of fact are required to establish the commission of the offenses;
4. the offenses differ only in that one is defined to prohibit a designated

kind of conduct generally and the other to prohibit a specific instance of such conduct; or

5. the offense is defined to prohibit a continuing course of conduct and the offender's course of conduct was interrupted, unless the law provides that the specific periods of such conduct constitute separate offenses.

3.1.5 Lesser included Offenses.

1. An offender may be convicted of an offense included in an offense charged without having been specifically charged with the lesser included offense. An offense is included when:
    c. it is established by proof of the same or less than all the facts required to establish the commission of the offense charged;
    d. it consists of attempt or solicitation to commit the offense charged or to commit an offense otherwise included therein; or
    e. it differs from the offense charged only in that it is a less serious injury or risk of injury to the same person, property, or Tribal interest, or a lesser kind of culpability suffices to establish its commission.
2. The Tribal Court need not charge the jury with respect to an included offense unless there is a rational basis for a verdict acquitting the defendant of the offense charged and convicting the defendant of the lesser included offense.

3.1.6 Burden of Proof. The defendant in a criminal proceeding is presumed to be innocent until each element of the offense with which the defendant is charged is proved beyond a reasonable doubt. In the absence of such proof, the defendant shall be acquitted.

3.1.7 Classification of Offenses. Exclusive and concurrent jurisdiction. Offenses shall be designated as Class A, Class B, Class C, Class D, or Class E offenses.

3.1.8 Time Limitations.

1. Unless otherwise specified by statute:
    a. prosecution for any Class A or Class B offense must be commenced within one year after the alleged offense is committed;
    b. prosecution for any Class C or Class D offense must be commenced within two years after the alleged offense is committed;
    c. prosecution for any Class E offense must be commenced within three years after the alleged offense is committed;
    d. if the victim is a minor or has a mental disorder at the time the offense occurred, prosecution must be commenced within one year after the legal disability terminates.
2. The period of limitation does not run under the following conditions:
    a. during any period in which the offender is not usually and publicly residing within this Reservation or is beyond the jurisdiction of the Tribal Court;
    b. during any period in which the offender is a public officer and the offense charged is theft of public funds while in public office; or

c. during a prosecution pending against the offender for the same conduct even if the prosecution is dismissed.

3. An offense is committed either when every element occurs or, if the offense is based upon a continuing course of conduct, when the course of conduct is terminated. The time starts to run on the day after the offense is committed.

4. A prosecution is commenced when a complaint is filed.

3.1.9 Sentencing.

1. A person convicted of an offense may be sentenced as follows:

   a. for a conviction of a Class A offense, the offender may only be sentenced to pay a fine or some other sentence not involving imprisonment. For Class A offenses where no fine amount is specifically provided, the maximum fine shall be $100;

   b. for a conviction of a Class B offense, the offender may be sentenced to imprisonment for a period not to exceed 10 days, or a fine not to exceed $250, or both, unless another sentence is specified by statute;

   c. for a conviction of a Class C offense, the offender may be sentenced to imprisonment for a period not to exceed 30 days, or a fine not to exceed $1000, or both, unless another sentence is specified by statute;

   d. for a conviction of a Class D offense, the offender may be sentenced to imprisonment for a period not to exceed 180 days, or a fine not to exceed $2,500, or both, unless another sentence is specified by statute; or

   e. for conviction of a Class E offense, the offender may be sentenced to imprisonment for a period not to exceed one year, or a fine not to exceed $5,000, or both, unless another sentence is specified by statute;

2. The fines listed above may be imposed in addition to any amounts ordered paid as restitution.

3. Any person adjudged guilty of an offense under this Code shall be sentenced in accordance with this section and Section 2.11.3, unless otherwise specified.

3.1.10 Mental State. A person is not guilty of an offense unless the person acts purposely, knowingly, or negligently, as the Code may provide, with respect to each element of the offense, or unless the person's acts constitute an offense involving strict liability.

3.1.11 Strict Liability. A person may be guilty of an offense without having the requisite mental state only if the Code provision defining the offense clearly indicates the Council's purpose to impose strict liability for the conduct described.

3.1.12 Definitions. Unless otherwise specified in a particular section, the following general definitions shall apply in this Chapter:

1. "**Abuse**" includes, but is not limited to:

   a. the infliction of physical or mental injury; or

   b. the deprivation of food, shelter, clothing, or services necessary to maintain the physical or mental health of a person.

2. "**Acts**" has its usual and ordinary meaning and includes any voluntary bodily movement, any form of communication, and when relevant, a failure or omission to take action.

3. "**Another**" means a person or persons, as defined in this Code, other than the offender.

4. "**Benefit**" means gain or advantage or anything regarded by the beneficiary as gain or advantage.

5. "**Bodily harm**" or "**bodily injury**" means physical pain, illness or any impairment of physical condition.

6. "**Citation**" means a written direction that is issued by a law enforcement officer and that requests a person to appear before the court at a stated time and place to answer a charge for the alleged commission of an offense.

7. "**Cohabit**" means to live together in an arrangement whereby the parties voluntarily assume the rights, duties and obligations which are normally manifested by married persons.

8. "**Common scheme**" means a series of acts or omissions motivated by a purpose to accomplish a single criminal objective or by a common purpose or plan which results in the repeated commission of the same offense or affects the same person or persons, or the same property.

9. "**Conduct**" means an act or series of acts and the accompanying mental state.

10. "**Conviction**" means a judgment or sentence entered upon a plea of guilty or no contest, or upon a verdict or finding of a defendant's guilt rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury. Once a conviction has been expunged, it is no longer considered a conviction under Tribal law.

11. "**Deceit**" means:

    a. creating or confirming in another an impression which is false and which the offender does not believe to be true;

    b. failing to correct a false impression which the offender previously had created or confirmed;

    c. preventing another from acquiring information pertinent to the disposition of the property involved;

    d. selling or otherwise transferring or encumbering property, failing to disclose a lien, adverse claim, or other legal impediment to the enjoyment of the property whether such impediment is of value or is not a matter of official record; or

    e. promising performance which the offender does not intend to perform or knows will not be performed. Mere failure to perform, without additional evidence, is not conclusive proof that the offender did not intend to perform.

12. "**Deprive**" means to withhold the property of another:

    a. permanently;

    b. for such a period as to appropriate a portion of its value; or

    c. with the purpose to restore it only upon payment of a reward or other compensation.

13. "**Felony**" means a Class E offense.

14. "**Force**" means the infliction, attempted infliction, or threatened infliction of bodily harm by a person, or the commission or threat of any other crime by a person against the complainant or another which causes the complainant to reasonably believe that the person has the present ability to execute the threat, thereby causing the complainant to submit.

15. "**Harm**" means the loss, disadvantage, or injury or anything so regarded by the individual affected, including loss, disadvantage, or injury to any person or entity in which the individual has a

recognized interest.

16. "**Intoxicating substance**" means any drug or any alcoholic beverage, including but not limited to any beverage containing ½ of 1% or more of alcohol by volume, which, when used in sufficient quantities, ordinarily or commonly produces intoxication.

17. "**Involuntary act**" means any act which is:

    a. a reflex or convulsion;

    b. a bodily movement during unconsciousness or sleep;

    c. conduct during hypnosis or resulting from hypnotic suggestion; or

    d. a bodily movement that otherwise is not consciously or habitually a product of the effort or determination of the actor.

18. "**Knowingly**" - A person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when the person is aware of the person's own conduct or that the circumstance exists. A person acts knowingly with respect to the result of conduct described by a statute defining an offense when the person is aware that it is highly probable that the result will be caused by the person's conduct. When knowledge of the existence of a particular fact is an element of an offense, knowledge is established if a person is aware of a high probability of its existence. Equivalent terms, such as "knowing" or "with knowledge", have the same meaning.

19. "**Law enforcement officer**" means any person who by virtue of his or her office of public or Tribal employment is vested by law with a duty to maintain public order or to make arrests for offenses while acting within the scope of his or her authority.

20. "**Mental Disorder**" means any organic, mental, or emotional impairment which has substantial adverse effects on an individual's cognitive or volitional functions. It does not include an abnormality manifested only by repeated criminal or other antisocial behavior.

21. "**Misdemeanor**" means a Class A, Class B, Class C, or Class D offense.

22. "**Negligently**" A person acts negligently with respect to an element of an offense when the person should be aware of a substantial and unjustifiable risk that the element presently exists or will result from his or her conduct. The risk must be of such a nature and degree that the person's failure to perceive it involves a gross deviation from the standard of care that a reasonable person would observe in the same situation, considering the nature and purpose of the person's conduct and the circumstances known to her or him.

23. "**Obtain or exert unauthorized control**" means a person acting without lawful authority:

    a. tries to bring about a transfer of interest or possession in property, whether to the offender or to another; or

    b. tries to secure the performance of labor or services, whether for the offender's benefit or the benefit of another; or

    c. takes, carries away, sells, conveys or transfers title to, interest in or possession of property.

24. "**Occupied structure**" means any building, vehicle or other place suited for human occupancy or night lodging of persons or for carrying on business regardless of whether a person is actually present. Each unit of a building consisting of 2 or more units separately secured or occupied is a separate occupied structure.

25. "**Offense**" means a crime for which a sentence of labor, time in jail, a fine, restitution, or other penalty provided by law may be imposed.

26. "**Official detention**" means arrest, detention in any facility for custody of persons under charge or conviction of a crime, or any other detention for law enforcement purposes.

27. "**Owner**" means a person, other than the offender, who has possession of or any other interest in the property involved, even though such interest or possession is unlawful, and without whose consent the offender has no authority to exert control over the property.

28. "**Person**" an individual, association, corporation, partnership, or other legal entity.

29. "**Possession**" is the knowing control of anything for a sufficient time to be able to terminate control.

30. "**Premises**" includes land, buildings, and appurtenances thereto.

31. "**Property**" means anything of value to the owner. Property includes but is not limited to: a. real estate, money and commercial instruments;

    b. written instruments representing or embodying rights concerning anything of value, including labor or services, or that are otherwise of value to the owner;

    c. things growing on, or affixed to, or found on land, or part of or affixed to any building;

    d. birds, fish, livestock and other animals ordinarily kept in a state of confinement; and

    e. electronic impulses, electronically processed or produced data or information, commercial instruments, computer software or computer programs, in either machine-or-human-readable form, computer services, any other tangible or intangible item of value relating to a computer, computer system, or computer network, and any copies thereof.

32. "**Property of another**" means real or personal property in which a person other than the offender or a government has an interest that the offender has no authority to defeat or impair, even though the offender may have an interest in the property.

33. "**Protective order**" is a court order restraining a person from engaging in the commission or continuance of some act which may result in irreparable harm to another.

34. "**Public place**" means any place to which the public has access.

35. "**Purposely**". A Person acts purposely with respect to a result or to conduct described by a statute defining an offense when:

    a. if the element of the offense involves the nature of his or her conduct or a result thereof, it is his or her conscious object to engage in conduct of that nature or to cause such a result; and

    b. if the element of the offense involves the attendant circumstances, he or she is aware of the existence of such circumstances or he or she believes or hopes that they exist.

36. "**Reasonable apprehension**" is deemed to exist in any situation where a person knowingly points a firearm at or in the direction of another person, whether or not the offender believes the firearm to be loaded. In all other circumstances, "reasonable apprehension" is a question of fact to be determined by the trier of fact.

37. "**Restitution**" means a requirement, as a condition of a sentence, that an offender repay the victim or the Tribes in money or services.

38. "**Serious bodily harm**" or "serious bodily injury" means bodily injury which creates a risk of death, causes serious permanent or protracted loss or impairment of the function or process of any bodily member or organ, causes permanent disfigurement, or causes a serious mental disorder.

39. "**Sexual contact**" means any touching of the sexual or other intimate parts of the person of another for the purpose of arousing or gratifying the sexual desire of either party or for the

purpose of satisfying the defendant's aggressive impulses.

40. "**Sexual intercourse**" means penetration of the vulva, anus, or mouth of one person by the penis of another person, penetration of the vulva or anus of one person by any body member of another person, or penetration of the vulva or anus of one person by any foreign instrument or object manipulated by another person for the purpose of arousing or gratifying the sexual desire of either party or for the purpose of satisfying the defendant's aggressive impulses. Any penetration, however slight, is sufficient.

41. "**Solicit**" or "**solicitation**" means to command, authorize, urge, incite, request or advise another to commit an offense.

42. "**Statute**" means any Tribal Code section, Tribal ordinance, or adopted section of the Revised Code of Washington.

43. "**Tamper**" means to interfere with something improperly, make unwarranted alterations in its existing condition, or deposit refuse upon it.

44. "**Threat**" means a menace, however communicated, to:

a. inflict physical harm on any person, or on the property of another;

b. subject any person to physical confinement or restraint;

c. commit any criminal offense;

d. falsely accuse any person of a criminal offense;

e. expose any person to hatred, contempt, or ridicule;

f. harm the credit or business reputation of any person;

g. reveal any information sought to be concealed by the person threatened;

h. take an unauthorized action as an official against anyone or anything, withhold an official action, or cause the withholding of an official action; or

ii. testify or provide information or withhold testimony or information with respect to another's legal claim or defense.

45. "**Tribes**" refers to the Tulalip Tribes.

46. "**Underage person**" means a person who is below the age designated by the particular section of the statute.

47.a. "**Value**" means the market value of the property at the time and place of the crime or, if the market value cannot be satisfactorily ascertained, the cost of the replacement of the property within a reasonable time after the crime. If the offender appropriates a portion of the value of the property, the value must be determined as follows:

The value of an instrument constituting an evidence of debt, such as a check, draft, or promissory note, is considered the amount due or collectible. The figure is ordinarily the face amount of the indebtedness less any portion of the indebtedness that has been satisfied.

The value of any other instrument that creates, releases, discharges, or otherwise affects any valuable legal right, privilege, or obligation is considered the amount of economic loss that the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

The value of electronic impulses, electronically produced data or information, computer software

or programs, or any other tangible or intangible item relating to a computer, computer system, or computer network is considered to be the amount of economic loss that the owner of the item might reasonably suffer by virtue of the loss of the item. The determination of the amount of economic loss includes but is not limited to consideration of the value of the owner's right to exclusive use or disposition of the item.

b. When it cannot be determined if the value of the property is more or less than $1,000 by the standards set forth in subsection (a), its value is considered to be an amount less than $1,000.

c. Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the property.

48. "**Vehicle**" means any device for transportation by land, water, or air or mobile equipment with provisions for transport of an operator.

49. "**Weapon**" means any instrument, firearm, article, or substance which, regardless of its primary function, is readily capable of being used to produce death or serious bodily harm.

50. "**Witness**" means any person whose testimony is desired in any official proceeding or in any investigation.

Part 2 - Liability Principles

3.2.1 CONDUCT AND RESULT.

1. Conduct is the cause of a result if:
   a. without the conduct the result would not have occurred; and
   b. any additional causal requirements imposed by the specific code provision are satisfied.

2. If knowingly or purposely causing a result is an element of an offense and the result is not within the contemplation or purpose of the offender, either element can nevertheless be established if:
   a. the final result differs from the contemplated result only in the respect that a different person or different property is affected or that the injury or harm caused is less than originally contemplated; or
   b. the result involves the same kind of harm or injury as contemplated but the precise harm or injury is different or occurred in a different way, unless the actual result is too remote or accidental to have a bearing on the offender's liability or on the gravity of the offense.

3. If negligently causing a particular result is an element of an offense and the offender is not aware or should not have been aware of the probable result, negligence can nevertheless be established if:
   a. the actual result differs from the probable result only in the respect that a different person or different property is affected or that the actual injury or harm is less; or
   b. the actual result involves the same kind of injury or harm as the probable result, unless the actual result is too remote or accidental to have a bearing on the offender's liability or the gravity of the offense.

3.2.2 Voluntary act. An element of every offense is a voluntary act, which includes an omission to perform a duty which the person is mentally, physically and financially capable of performing.

3.2.3 Responsibility. A person who is in an intoxicated or drugged condition is criminally responsible for her or his conduct unless such conduct is involuntarily produced and deprives the person of the capacity to appreciate the criminality of the conduct or to conform her or his conduct to the requirements of the law.

3.2.4 Accountability.

1. A person is legally accountable for the conduct of another when:
    a. having a mental state described by the code provision defining the offense, the person causes another to perform the conduct, regardless of the legal capacity or mental state of the other person;
    b. the code provision defining the offense makes the person accountable;
    c. either before or during the commission of an offense with the purpose to promote or facilitate such commission, the person solicits, aids, abets, agrees, or attempts to aid such other person in the planning or commission of the offense.
2. However, a person is not accountable if:
    a. the person is a victim of the offense committed; or
    b. before the commission of the crime the person terminates her or his efforts to promote or facilitate the commission of the crime and takes steps to negate the effect or otherwise prevent the commission of the offense.
3. A person may not be found guilty of an offense on the testimony of one responsible or legally accountable for the same offense unless that testimony is corroborated by other evidence that in itself and without the aid of the testimony of the one responsible or legally accountable for the same offense, tends to connect the defendant with the commission of the offense.

Part 3 - Affirmative Defenses and Justifiable Use of Force

3.3.1. CONSENT.

1. The complainant's or victim's consent to the performance of the conduct constituting an offense or to the result is an affirmative defense which must be proved by the defendant by a preponderance of the evidence.
2. Consent is ineffective if:
    a. it is given by a person who is not legally authorized to approve of the conduct constituting an offense;
    b. it is given by a person who by reason of youth, mental impairment, or mental incapacitation is unable to make a reasonable judgment as to the nature or harmfulness of the conduct charged;
    c. it is induced by force, duress, or deception; or(d) it is against public policy to permit the conduct or the resulting harm, even though consent was given.

3.3.2 Compulsion. A person is not guilty of an offense by reason of conduct which he or she performs

under the compulsion of threat or menace of the imminent infliction of death or serious bodily harm if he or she reasonably believes that death or serious bodily harm will be inflicted upon him or her if he or she does not perform such conduct. Compulsion is an affirmative defense which must be proved by the defendant by a preponderance of the evidence.

3.3.3 Entrapment. A person is not guilty of an offense if his or her conduct is incited or induced by a public servant or his or her agent for the purpose of obtaining evidence for the prosecution of such person. However, this section is inapplicable if a public servant or his or her agent merely affords to such person the opportunity or facility for committing an offense in furtherance of criminal purpose which such person has originated. Entrapment is an affirmative defense which must be proved by the defendant by a preponderance of the evidence.

3.3.4 Self-defense.

1. A person is justified in the use of force or threat to use force against another when and to the extent the person reasonably believes that such conduct is necessary to:
    a. defend herself or himself or another against such other's imminent use of unlawful force;
    b. prevent or terminate such other's unlawful entry into or attack upon an occupied structure; or
    c. prevent or terminate the offender's trespass on, or other tortuous or criminal interference with, either real or personal property lawfully in the person's possession, or which the person has a legal duty to protect, or in the possession of another who is a family or household member.
2. A person is justified in the use of force likely to cause death or serious bodily harm only if the person reasonably believes such force is necessary to prevent imminent death or serious bodily harm to herself or himself or another person.
3. The defendant has the burden of producing sufficient evidence to raise a reasonable doubt of his or her culpability when the defendant raises self-defense as an affirmative defense.

3.3.5 Use of Force by Aggressor. Self-defense is not available to a person who:

1. is attempting to commit, committing, or escaping after the commission of an offense; or
2. knowingly or purposely provokes the use of force against herself or himself, unless:
    a. such force is so great that the person reasonably believes there is imminent danger of death or serious bodily harm and the person has exhausted every reasonable means to escape such danger other than the use of force which is likely to cause death or serious bodily harm to the assailant; or,
    b. in good faith, the person withdraws from physical contact with the assailant and clearly indicates to the assailant the desire to withdraw and terminate the use of force but the assailant continues or resumes the use of force.

3.3.6 Use of Deadly Force. A law enforcement officer, or any person acting under the officer's command to aid and assist, is justified in using deadly force when the officer is performing a legal duty or the execution of legal process and reasonably believes the use of force is necessary to protect herself or himself or others from imminent danger to life.

3.3.7 Resisting Arrest. A person is not authorized to use force to resist arrest which the person knows is being made by a law enforcement officer or by a private person summoned and directed by a law enforcement officer to make the arrest, even if the person believes the arrest is unlawful and the arrest is in fact unlawful.

Part 4 - Inchoate Offenses

3.4.1 CONSPIRACY.

1. A person commits the offense of conspiracy when, with the purpose that an offense be committed, the person agrees with another to the commission of the offense. No person may be convicted of conspiracy to commit an offense unless an act in furtherance of such agreement has been committed by the person or by a co-conspirator.
2. a. "**Act in furtherance**" is any course of conduct which makes it more probable than not that an act towards the commission of an offense will occur and the person's present conduct is not terminated.
   b. Proof of an "**act in furtherance**" may be drawn from the circumstances surrounding the involved parties' actions and does not require direct proof of an agreement.
3. It shall not be a defense to conspiracy that the person or persons with whom the accused has conspired:
   a. has not been prosecuted or convicted;
   b. has been convicted of a different offense;
   c. is not amenable to justice;
   d. has been acquitted; or
   e. lacked the capacity to commit the offense.
4. A person convicted of conspiracy shall be punished not to exceed the maximum sentence provided for the offense which is the object of the conspiracy.

3.4.2 Solicitation.

1. A person commits the offense of solicitation when, with the purpose that an offense be committed, he commands, encourages, or facilitates the commission of that offense.
2. A person convicted of solicitation shall be punished not to exceed the maximum provided for the offense solicited.

3.4.3 Attempt.

1. A person commits the offense of attempt when, with the purpose to commit a specific offense, the person does any act towards the commission of such offense.
2. It shall not be a defense to a charge of attempt that because of a misapprehension of the circumstances it would have been impossible for the accused to commit the offense attempted.
3. A person convicted of attempt shall be punished not to exceed the maximum sentence provided for the offense attempted.
4. A person shall not be liable under this section if, under circumstances manifesting a voluntary and

complete renunciation of the criminal purpose, the person avoided the commission of the offense attempted by abandoning the criminal effort.

5. Proof of the completed offense does not bar conviction for the attempt.

Part 5 - Offenses Involving Damage to the Person

3.5.1 HOMICIDE.

1. A person commits the offense of homicide by purposely, knowingly, or negligently causing the death of another human being.
2. Homicide is a Class E offense.

3.5.2 Aiding or Soliciting Suicide.

1. A person commits the offense of aiding or soliciting a suicide by purposely aiding or assisting another in taking his or her own life.
2. The fact suicide was not successfully carried out is not a defense.
3. Aiding or soliciting suicide is a Class E offense.

3.5.3 Assault.

1. A person commits the offense of assault by:
   a. knowingly or purposely causing bodily harm to another;
   b. negligently causing bodily harm to another with a weapon;
   c. knowingly or purposely making physical contact of an insulting or provoking nature with an individual; or
   d. knowingly or purposely causing reasonable apprehension of bodily harm in another.
2. "**Reasonable apprehension**" is deemed to exist in any situation where a person knowingly points a firearm at or in the direction of another person, whether or not the person pointing the firearm believes the firearm to be loaded. In all other circumstances "reasonable apprehension" is a question of fact to be determined by the trier of fact.
3. Except as provided in subsection (4), assault is a Class D offense.
4. If the victim is less than 14 years old and the offender is an adult, the assault is a Class E offense.

3.5.4 Aggravated Assault.

1. A person commits the offense of aggravated assault by knowingly or purposely causing:
   a. serious bodily harm to another;
   b. bodily harm to another with a weapon;
   c. reasonable apprehension of serious bodily harm in another by use of a weapon; or
   d. bodily harm to a law enforcement officer or a person who is responsible for the care or custody of a prisoner.
2. Aggravated assault is a Class E offense.

3.5.5 Intimidation.

1. A person commits the offense of intimidation by attempting to have another person perform or refrain from performing a specific act by threatening, under circumstances producing a fear that the threat will be carried out, to:
    a. inflict bodily harm on the person threatened or any other person;
    b. subject any person to physical confinement or restraint; or
    c. commit any Class E offense.
2. Intimidation is a Class E offense.

3.5.6 Mistreating Prisoners.

1. A person commits the offense of mistreating prisoners, if, being responsible for the care or custody of a prisoner, he purposely or knowingly,
    a. assaults or otherwise injures a prisoner; or
    b. intimidates, threatens, endangers, or withholds reasonable necessities from the prisoner; or
    c. violates any civil right of a prisoner.
2. Mistreating prisoners is a Class D offense.

3.5.7 Negligent vehicular assault.

1. A person who negligently operates a motor vehicle under the influence of alcohol, a dangerous drug, any other drug, or any combination of the three, and who causes bodily injury to another, commits the offense of negligent vehicular assault.
2. Negligent vehicular assault is a Class D offense.

3.5.8 Negligent Endangerment.

1. A person who negligently engages in conduct that creates a substantial risk of death or serious bodily injury to another commits the offense of negligent endangerment.
2. Negligent endangerment is a Class D offense.

3.5.9 Criminal Endangerment.

1. A person who knowingly engages in conduct that creates a substantial risk of death or serious bodily injury to another commits the offense of criminal endangerment.
2. For the purposes of this Section, "knowingly" means that the person is aware of the high probability that the conduct in which he or she is engaging, whatever that conduct may be, will cause a substantial risk of death or serious bodily injury to another.
3. Criminal endangerment is a Class E offense.

3.5.10 Elder Abuse.

1. A person commits the offense of elder abuse by knowingly or purposely, physically or mentally, abusing or exploiting an older person.

2. "**Exploiting**" means the unjust use of an individual's money or property for another's advantage by means of duress, menace, fraud, or undue influence.

3. "**Older person**" means a Tribal member or other person residing on the Reservation who is:

   a. 62 years of age or older;

   b. determined by the Tribal Court to be an elder; or

   c. at least 45 years of age and unable to protect herself or himself from abuse, neglect, or exploitation because of a mental disorder or physical impairment, or frailties or dependencies brought about by age or disease or alcoholism.

4. Elder abuse is a Class D offense.

3.5.11 Robbery.

1. A person commits the offense of robbery if, in the course of committing a theft, the person:

   a. inflicts bodily harm upon another;

   b. threatens to inflict bodily harm upon any person;

   c. purposely or knowingly puts any person in fear of immediate bodily harm; or (d) commits or threatens to commit any Class E offense other than theft.

2. "**In the course of committing a theft**" includes acts which occur in an attempt to commit theft, in the commission of a theft, or in flight after the attempt or commission of a theft.

3. Robbery is a Class E offense.

3.5.12 Unlawful Restraint.

1. A person commits the offense of unlawful restraint by knowingly or purposely, and without lawful authority, restraining another so as to interfere substantially with another's liberty.

2. Unlawful restraint is a Class C offense.

3.5.13 Kidnapping.

1. A person commits the offense of kidnapping by knowingly or purposely, and without lawful authority, restraining another person by:

   a. secreting or holding the person in a place of isolation; or

   b. using or threatening to use physical force against the other person.

2. Kidnaping is a Class E offense.

3.5.14 Aggravated Kidnaping.

1. A person commits the offense of aggravated kidnaping if he or she knowingly or purposely and without lawful authority restrains another person by either secreting or holding him or her in a place of isolation or by using or threatening to use physical force, with any of the following purposes:

   a. to hold for ransom or reward or as a shield or hostage;

   b. to facilitate commission of any felony or flight thereafter;

c. to inflict bodily injury on or to terrorize the victim or another; or

d. to interfere with the performance of any governmental or political function.

2. Aggravated kidnaping is a Class E offense.

3.5.15 Terrorism.

1. A person commits the offense of terrorism when he or she knowingly or purposely:

a. threatens to destroy or damage any structure, conveyance, or other real or personal property within the Reservation Boundaries;

b. attempts or conspires to destroy or damage any structure, conveyance, or other real or personal property within the Reservation Boundaries; or

c. creates a substantial risk of serious bodily injury to any other person by destroying or damaging any structure, conveyance, or other real or personal property within the reservation boundaries.

2. Terrorism is a Class E offense.

3.5.16 Harassment.

1. A person commits the offense of harassment if:

a. Without lawful authority, the person knowingly threatens:

(I) To cause bodily injury immediately or in the future to the person threatened or to any other person; or

(ii) To cause physical damage to the property of a person other than the actor; or

(iii) To subject the person threatened or any other person to physical confinement or restraint; or

(iv) Maliciously to do any other act which is intended to substantially harm the person threatened or another with respect to his or her physical or mental health or safety; and

b. The person by words or conduct places the person threatened in reasonable fear that the threat will be carried out. "Words or conduct" includes, in addition to any other form of communication or conduct, the sending of an electronic communication.

2. Harassment is a Class C Offense

3.5.16.1 Statement of Purpose. It is the purpose of this section to create and maintain a peaceful and safe environment for all persons on the Tulalip Indian Reservation by making unlawful the repeated invasions of a person's privacy by acts and threats which show a pattern of harassment designed to coerce, intimidate, or humiliate the person harassed. Harassment is a serious crime against society and this section seeks to guarantee to the victim of harassment the maximum protection under the law.

3.5.16.2 Definitions.

a. "**Harassment**": For the purpose of this section. "**harassment**" means a knowing and willful course of conduct directed at a specific person, which seriously alarms, annoys harasses, or is detrimental to that person, and which serves no legitimate or lawful purpose. The course of conduct shall be such as would cause a reasonable person to suffer substantial emotional distress or would cause a reasonable person to fear for the well being of his or her family, and shall actually cause fore the petitioner substantial emotional distress or fear for the well being of his or

family.

b. "**Course of Conduct**": For the purpose of this section, "**course of conduct**" means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose. "Course of conduct" includes, but is not limited to, the use of electronic media as a means of conducting harassment.

c. "**Electronic Communication**": For the purpose of this section, **"electronic communication**" means any form of expression or exchange of information by speech or writing using electronic means. Electronic communication includes but is not limited to, communication via telephone, facsimile and electronic mail.

d. "**Specific Person**": For the purpose of this section, "**specific person**" means any person who is subjected to harassment as defined by Section 3.5.16.2.a.

e. "**Electronic Surveillance**": For the purpose of this section, "**electronic surveillance**" means close observation of or listening to a person or place by electronic means for the purpose of harassment by any electronic means.

f. "**Emotional Distress**": For the purpose of this section, "**emotional distress**" means a highly unpleasant reaction such as anguish, grief, fright, humiliation, or fury.

g. **"Harassment Restraining Order**": For the purpose of this section, "**Harassment restraining order**" means a court order restricting a person from harassing, threatening, contacting, or approaching another specified person for a period of time.

h. "**Temporary Harassment Restraining Order**": For the purpose of this section, "**temporary restraining order**" means a court order restricting a person from harassing, threatening, contacting, or approaching another specified person not longer than fifteen (15) days.

3.5.16.3 Petition for an Harassment Restraining Order-Availability. There shall exist an action known as Harassment retraining order ("**restraining order**") for cases of harassment. The condition for obtaining such an order are as follows:

a. A petition to obtain a retraining order under this section may be filed by any person claiming to be the victim of harassment.

b. A petition for relief shall allege the existence of harassment and shall be accompanied by an affidavit under oath stating the facts and circumstances from which relief is sought.

c. Standard, simplified petition forms with instructions for completion shall be available to persons seeking restraining orders against a harasser at the office of the court clerk.

d. A petition for relief may be made regardless of whether or not there is a pending lawsuit, complaint, petition, or other action between the parties, expect that a parent may not petition for a restraining order on behalf of a child against the child's other parent. Petitioner shall be required to disclose nay pending suits t the time the petition is entered.

e. Civil filing fees shall apply for filing of a petition under this section, unless the court makes a finding upon due inquiry that the petitioner lacks the financial resources to pay filing fees.

f. The parent or guardian of a child under eighteen may petition for a restraining order to enjoin a person age eighteen years or over who is not that child's parent from contact with that child upon showing that contact with the person to be enjoined is detrimental to the welfare of the child.

g. The parent or guardian of a child under the age of eighteen may petition for a restraining order to enjoin a person under the age of eighteen years from contact with that child, but only where the person to be enjoined has been adjudicated of offense against the child protected by the other, or is under investigation or has been investigated for such an offense. The parent, guardian, or custodian of the respondent child shall be notified of such action and served with process. In issuing a restraining order under this section, the court shall consider, among the other facts of the case, the severity of the alleged offense, any continuing physical danger or emotional distress to the alleged victim, and the expense, difficulty, and educational disruption that would be caused by enforcement of the order. The court shall send notice of the restriction to the school(s) attend by the person restrained and the person protected by the order. If the court deems that either the person restrained or the person protected by the order must transfer schools for the order to be enforceable, the parents(s) or legal guardian(s) of the person affected are responsible for transportation and other costs associated with the change of school.

3.5.16.4 Harassment Restraining Orders-Ex Parte Temporary Hearing– Longer Term and Renewal.

a. Upon filing a petition for a Harassment order under this section, the petitioner may obtain an ex parte temporary Harassment retraining order with or without serving notice upon the respondent by filing an affidavit which, to the satisfaction of the court, shows reasonable proof of harassment of the petitioner by the respondent and that great or irreparable harm will result to the petitioner if the temporary anti-restraining order is not granted. This temporarily restraining order shall be valid for fifteen (15) calendar days.

b. Upon the issuance of a temporary anti-restraining order, the petitioner shall cause a copy of the order together with notice of hearing to be personally served on the respondent a minimum of five (5) days prior to the hearing. Service may be made by certified mail if personal service cannot be completed within specified period, and the return receipt indicating actual notice must be given to court.

c. At the hearing within fifteen (15) calendar days after the granting of the ex parte order of protection, a harassment restraining order shall be issued prohibiting such harassment if the court finds by a preponderance of the evidence that harassment exists or has occurred. Otherwise, the temporary retraining order shall be vacated. If the respondent does not appear, the petitioner must demonstrate that he received notice before or that despite petitioner's own due diligence service could not be made, a default judgment will be entered.

d. An order issued under this section shall be effective for not more than one year unless the court finds that the respondent is likely to resume harassment of the petitioner when the order expires. If so, the court may enter an order to a fixed time exceeding one year or may enter a permanent Harassment restraining order.

e. In the event that a respondent fails to appear for a hearing and the petitioner cannot demonstrate service upon him, the court may grant a second ex parte temporary Harassment restraining order by the same petitioner enjoining the same respondent. After two consecutive ex parte temporary Harassment orders have been issued, and notice still cannot be effected, the court may issue an Harassment restraining order. When a peace officer investigates a report of an alleged violation a restraining order issued without notice pursuant to this section, the officer shall issue notice of the order upon the respondent during the investigation. See Section 3.5.16.5.b.

f. At anytime within three month before the expiration of the order, the petitioner may apply for a renewal of the order by filing a petition for renewal with the court. The petition for renewal shall state the reasons why the petitioner seeks to renew the order. Upon receipt of the petition for renewal, the court shall order a hearing which shall be held within fifteen (15) days from the date of petition. The court shall grant the petition for renewal unless the respondent proves by preponderance of evidence that he will not resume harassment of the petitioner when the order expires. The court may renew the protection order for another fixed period or may enter a permanent order as provided in Subsection (3.5.16.4.d) of this section.

g. The court, in granting a Harassment restraining order, shall have broad discretion to grant such relief, as the court deems proper including:

1. Restraining the respondent from making attempts to contact the petitioner.
2. Restraining the respondent from making any attempts to monitor the petitioner by actual or electronic surveillance.
3. Requiring the respondent to stay a specified minimum distance from the petitioner's residence, workplace, and /or school.

3.5.16.5 Notice to Local Law Enforcement Agencies –Enforceability.

a. A copy of an Harassment restraining order granted under this chapter shall be forwarded by the clerk of the court on or before the next judicial day the Tulalip Police Department or appropriate law enforcement agency. Upon receipt of the order, the Police Department shall enter the order into nay computer-based criminal intelligence information system currently in use by the Department to list outstanding warrants. The Police Department shall expunge expired orders from the computer system. Entry into the information system constitutes notice to the Police Department of the existence of the order.

b. If an officer investigates an alleged violation of an order issued pursuant to Section 3.5.16.4.e and notice has not been effected prior to contact, the office shall arrest the respondent, but rather provide notice as described herein. Law enforcement should update the criminal information system to reflect that notice has been effected.

3.5.16.6 Contempt and Violation of Order-Penalties.

a. Willful violation of any Harassment retraining order subjects the respondent to criminal penalties under this ordinance.

b. Any respondent who is found guilty of violating the terms of Harassment restraining order may also, subject to the court's discretion, be held in contempt of court, and the court may impose such sanctions, as it deems appropriate.

c. The first violation of a Harassment restraining order is a Class C offense, and the offender may be sentenced to imprisonment for a period not to exceed thirty (30) days or a fine not to exceed $1,000, or both.

d. Subsequent violation of a Harassment restraining order is a Class D offense, and an offender may be sentenced to imprisonment for a period not to exceed one hundred eight (180) days, or fine not to exceed $2,500, or both.

3.5.16.7 Full Faith and Credit.

a. Harassment restraining orders issued by the Tulalip Tribal Court will be enforced throughout the state of Washington pursuant to RCW 13.34.240 and CR 82.5 (c).

b. To ensure that Harassment restraining orders issued by the Tulalip Tribal Court are enforced outside of the boundaries of the reservation, ant-harassment restraining orders issued in the Washington State Superior courts will be enforced within the boundaries of the Reservation.

c. Notice of reciprocal enforcement pursuant to this section shall be printed all Harassment orders issued by the court.

Part 6 - Sex Crimes

3.6.1 SEXUAL ASSAULT.

1. A person commits the offense of sexual assault by knowingly making sexual contact with another without consent, or who commits an assault as defined by Section 3.5.3, when such assault involves sexual contact.
2. "**Without consent**", as used in this section and in section 2-1-602, means:
    a. the victim is compelled to submit by force against himself, herself, or another, or
    b. the victim is incapable of consent because he or she is:
        i. mentally defective or incapacitated;
        ii. physically helpless; or
        iii. less than 16 years old.
    c. As used in subsection (2)(a), the term "force" means:

i. the infliction, attempted infliction, or threatened infliction of bodily injury or the commission of a forcible felony by the offender; or

ii. the threat of substantial retaliatory action that causes the victim to reasonably believe that the offender has the ability to execute the threat.

2. Except as provided in subsection (3), sexual assault is a Class D offense.

3. If the victim is less than 16 years old and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual assault, the offender commits a Class E offense.

4. An act "**in the course of committing sexual assault**" shall include an attempt to commit the offense or flight after the attempt or commission.

3.6.2 Sexual Intercourse without Consent.

1. A person who knowingly has sexual intercourse without consent with another person commits the offense of sexual intercourse without consent.

2. Sexual intercourse without consent is a class E offense.

3.6.3 Indecent Exposure.

1. A person who, for the purpose of arousing or gratifying the person's own sexual desire or the sexual desire of any person, exposes the person's genitals under circumstances in which the person knows the conduct is likely to cause affront or alarm commits the offense of indecent exposure.

2. Indecent exposure is a Class C offense.

3.6.4 Sexual Abuse of Children.

1. As used in this section, the following definitions apply:

a. "**Sexual conduct**" means actual or simulated:

i. sexual intercourse, whether between persons of the same or opposite sex;

ii. penetration of the vagina or rectum by any object, except when done as part of a recognized medical procedure;

iii. bestiality;

iv. masturbation;

v. sadomasochistic abuse;

vi. lewd exhibition of the genitals, breasts, pubic or rectal area of any person; or

vii. defecation or urination for the purpose of the sexual stimulation of the viewer.

b. "**Simulated**" means any depicting of the genitals or pubic or rectal area that gives the appearance of sexual conduct or incipient sexual conduct.

c. "**Visual medium**" means;

i. any film, photograph, videotape, negative, slide, or photographic reproduction that contains or incorporates in any manner any film, photograph, videotape, negative, or slide; or

ii. any disk, diskette, or other physical medium that allows an image to be displayed on a computer or other video screen and any image transmitted to a computer or other video screen by telephone line, cable, satellite, transmission, or other method.

2. A person commits the offense of sexual abuse of children if he or she knowingly:

   a. employs, uses, or permits the employment or use of a child in an exhibition of sexual conduct, actual or simulated;

   b. photographs, films, videotapes, or records a child engaging in sexual conduct, actual or simulated;

   c. persuades, entices, counsels, or procures a child to engage in sexual conduct, actual or simulated;

   d. processes, develops, prints, publishes, transports, distributes, sells, possesses with intent to sell, exhibits, or advertises material consisting of or including a photograph, photographic negative, undeveloped film, videotape, or recording representing a child engaging in sexual conduct, actual or simulated; or

   e. finances any of the activities described in subsections (1)(a) through (1)(d) knowing that the activity is of the nature described in those subsections.

3. Sexual abuse of children is a Class E offense.

4. For purposes of this section, "**child**" means any person less than 16 years old.

3.6.5 Incest.

1. A person commits the offense of incest if he or she has sexual contact as described in section 3.1.12(39) or sexual intercourse with an ancestor, a descendant, a brother or sister of the whole or half blood, or any stepson or stepdaughter.

2. Consent is a defense under this section to incest with or upon a stepson or stepdaughter, but consent is ineffective if the victim is less than 18 years old.

3. Incest is a Class E offense.

3.6.6 Provisions Generally Applicable to Sexual Crimes.

1. When criminality depends on the victim being less than 16 years old, it is a defense for the offender to prove that he or she reasonably believed the child to be above that age. Such belief shall not be deemed reasonable if the child is less than 14 years old.

2. No evidence concerning the sexual conduct of the victim is admissible in prosecutions under this part except evidence of the victim's past sexual conduct with the offender or evidence of specific instances of the victim's sexual activity to show the origin of semen, pregnancy, or disease which is at issue in the prosecution.

3. If the defendant proposes for any purpose to offer evidence described in subsection (2), the trial judge shall order a hearing out of the presence of the jury to determine whether the proposed evidence is admissible under subsection (2).

4. Evidence of failure to make a timely complaint or immediate outcry does not raise any presumption as to the credibility of the victim.

5. Resistance by the victim is not required to show lack of consent. Force, fear, or threat is sufficient alone to show lack of consent.

Part 7 - Offenses Against the Family

3.7.1 PROSTITUTION.

1. A person commits the offense of prostitution if such person knowingly engages in or agrees or offers to engage in sexual intercourse with another person, not his or her spouse, for compensation, whether such compensation is paid or to be paid.
2. Prostitution is a Class B offense.

3.7.2 Aggravated Promotion of Prostitution.

1. A person commits the offense of aggravated promotion of prostitution if he or she purposely or knowingly commits any of the following acts:
    a. compels another to engage in or promote prostitution;
    b. promotes prostitution of a child under the age of 18 years, whether or not he or she is aware of the child's age;
    c. promotes the prostitution of one's child, ward, or any person for whose care, protection, or support he or she is responsible.
2. Aggravated promotion of prostitution is a Class E offense.

3.7.3 Bigamy.

1. A person commits the offense of bigamy if, while married, the person knowingly contracts or purports to contract another marriage unless at the time of the subsequent marriage:
    a. the person believes on reasonable grounds that the prior spouse is dead;
    b. the person and the prior spouse have been living apart for 5 consecutive years throughout which the prior spouse was not known by the person to be alive;
    c. a court has entered a judgment purporting to terminate or annul a prior marriage and the person does not know the judgment to be invalid; or
    d. the person reasonably believes she or he is legally eligible to marry.
2. Bigamy is a Class B offense.

3.7.4 Failure to Support or Care for Dependent Person.

1. A person commits the offense of failure to support or care for a dependent person by knowingly:
    a. refusing or neglecting to furnish food, shelter, or proper care, which the person is physically and financially able to provide to any person recognized as legally dependent upon the person;
    b. endangering the health, welfare or emotional well being of any child under the person's care; or
    c. failing to provide financial support, which the person is legally obligated to provide and the person is financially able to provide.
2. Failure to support or care for a dependent person is a Class D offense.

3. It is not a defense to a charge of failure to support that any other person, organization, or agency furnishes necessary food, clothing, shelter, medical attention, or other essential needs for the support of the spouse, child, or other dependent.

4. A person commits the offense of aggravated failure to support if:

    a. the person has left the Reservation to avoid the duty of support; or

    b. the person has been previously convicted of the offense of failure to support.

5. Aggravated failure to support is a Class E offense.

3.7.5 Contributing to the Delinquency of an Underage Person.

1. The term underage person as used here denotes a person who is below the age designated by the particular section of the statute. A person commits the offense of contributing to the delinquency of an underage person by knowingly:

    a. selling, giving, supplying or encouraging the use of any intoxicating substances by a person under the age of 21;

    b. selling or giving explosives to a person under the age of 18;

    c. assisting, promoting, or encouraging a person under the age of 16 to

        i. abandon her or his place of residence without the consent of the minor's parents or legal guardian,

    ii. enter a place of prostitution,

    iii. engage in sexual conduct,

    iv. commit, participate, or engage in a criminal offense.

2. For a first conviction for contributing to the delinquency of an underage person, the offense is classified as a Class C offense.

3. For a second conviction for contributing to the delinquency of an underage person, the offense is classified as a Class D offense.

4. For a third or subsequent conviction for contributing to the delinquency of an underage person, the offense is classified as a Class E offense.

2.7.6 Failure to Send Children to School.

1. A person commits the offense of failure to send children to school by repeatedly neglecting or refusing, without good cause to send any child of school age under the person's care to school.

2. For a first conviction of failure to send children to school, the offense is classified as a Class B offense.

3. For a second or subsequent conviction of failure to send children to school, the offense is classified as a Class C offense.

3.7.7 Custodial Interference.

1. A person commits the offense of custodial interference when, with the intent to deprive another person or public agency of any custodial rights, the person maliciously takes, detains, entices, or conceals, either within or outside the exterior boundaries of the Reservation, any person under the age of 16, any incompetent person or any person entrusted by authority of law to the custody of

another person or institution.

2. Expenses incurred in locating and regaining physical custody of the person taken, enticed or kept in violation of this section are "pecuniary damages" for purposes of restitution.

3. Custodial interference is a Class E offense.

3.7.8 Visitation Interference.

1. A person who has legal custody of a minor child commits the offense of visitation interference if he or she knowingly or purposely frustrates the visitation rights of a person entitled to visitation under an existing court order.

2. Visitation interference is a Class C offense.

3.7.9 Curfew Violation.

1. Every person under the age of 18 years is subject to curfew times as follows:

   a. 11 p.m. Sunday through Thursday, and

   b. 12:00 midnight on Friday and Saturday.

2. Parents or guardians of children under the age of 18 are responsible for curfew compliance. Exceptions are permitted if the child is under the immediate supervision of a parent, guardian, or other adult approved by the parent or guardian. A child may attend authorized school functions without such supervision.

3. Any child who fails to obey curfew regulations as well as any parent, guardian or custodian whose children fail to obey curfew regulations commits the offense of curfew violation.

4. Curfew violation is a Class A offense with a maximum fine of $50.

Part 8 - Offenses Against Property

3.8.1 ARSON.

1. A person commits the offense of arson by knowingly or purposely using fire or explosives

   a. to damage or destroy a building or occupied structure of another without consent; or

   b. in a manner which places another person in danger of death or bodily harm, including a firefighter responding to or at the scene of the fire or explosion.

2. Arson is a Class E offense.

3.8.2 Negligent Arson.

1. A person commits the offense of negligent arson if he or she purposely or knowingly starts a fire or causes an explosion, whether on his own property or property of another, and thereby negligently

   a. places another person in danger of death or bodily injury, including a firefighter responding to or at the scene, or

   b. places property of another in danger of damage or destruction.

2. Negligent arson as defined above in (1)(b) is a Class C offense. Negligent arson as defined above

in (1)(a) is a Class E offense.

3.8.3 Criminal Mischief.

1. A person commits the offense of criminal mischief by knowingly or purposely:
    a. injuring, damaging, or destroying any property of another without his or her consent;
    b. tampering with the property of another or Tribal property without consent, so as to endanger or interfere with the use of the property; or
    c. damaging or destroying property in an attempt to defraud an insurer;
2. If the verified damage amount does not exceed $1,000, criminal mischief is a Class C offense.
3. If the verified damage amount is greater than $1,000, criminal mischief is a Class E offense.

3.8.4 Trespass.

1. A person commits the offense of trespass by knowingly or purposely and without express or implied privilege
    a. entering or remaining in an unoccupied structure;
    b. entering or remaining in or upon the premises of another;
    c. entering any vehicle or any part thereof; or
    d. allowing livestock to occupy or graze on the cultivated or enclosed land of another.
    e. entering onto the Tulalip Reservation after having been excluded from the reservation pursuant to Ordinance 71.
2. A privilege to enter may be extended
    a. by explicit invitation, license, or permission from the landowner or any other authorized person,
    b. by a landowner's failure to give notice that the lands are restricted, or
    c. by law.
3. Access to Tribal lands, waters, and natural resources by persons who are not Tribal members is restricted as provided by Tribal and federal law. Tribal members crossing Reservation lands in order to exercise hunting and fishing rights retained by treaty do so with privilege.
4. Notice restricting entry onto non-Tribal lands must be placed on a post, structure, or natural object by marking it with written notice or with not less than 50 square inches of fluorescent orange paint, except that when metal posts are used the top one-third of the post must be painted. Notice must be placed at all normal points of access to the property. A privilege to enter may be revoked at any time by personal communication of notice by the landowner or other authorized person to the entering person.
5. Trespass is a Class C offense.

3.8.5 Burglary.

1. A person commits the offense of burglary by knowingly entering or remaining in an occupied structure, without privilege to be there, with the purpose of committing an offense therein.
2. Burglary is a Class E offense.

3.8.6 Theft.

1. A person commits the offense of theft by knowingly and purposely obtaining or exerting unauthorized control, including by threat or deception, over the property of the owner or by obtaining control over stolen property knowing the property to have been stolen by another, and the person
    a. has the purpose of depriving the owner of the property,
    b. uses, conceals, or abandons the property in such a manner as to deprive the owner of the property, or
    c. uses, conceals, or abandons the property knowing such use, concealment, or abandonment probably will deprive the owner of the property.
2. A pawnbroker or dealer who buys and sells secondhand merchandise and allows stolen property to be sold, bartered or otherwise disposed of after a Tribal police officer has requested him to hold the property for 30 days commits the offense of theft.
3. If the verified value of the property does not exceed $1,000, theft is a Class C offense.
4. If the verified value of the property is greater than $1,000, theft is a Class E offense.

3.8.7 Theft of Lost or Mislaid Property.

1. A person commits the offense of theft by obtaining control over lost or mislaid property when the person
    a. knows or learns the identity of the owner or knows, is aware, or learns of a reasonable method of identifying the owner; or
    b. fails to take reasonable measures to restore the property to the owner; and
    c. has the purpose of depriving the owner permanently of the use or benefit of the property.
2. Theft of lost or mislaid property is a Class B offense.

3.8.8 Theft of Labor or Services or Use of Property.

1. A person commits the offense of theft when he or she obtains use of property, labor or services of another which are available only for hire, by means of threat or deception or knowing that such use is without the consent of the person providing the property, labor, or services.
2. If the verified value of the labor or services or use of property does not exceed $1,000, its theft under this Section is a Class C offense.
3. If the verified value of the labor or services or use of property is greater than $1,000, its theft is a Class E offense.

3.8.9 Failure to Return Rented or Leased Property.

1. A person commits the offense of failure to return rented or leased property if, without notice to and permission of the lessor, the person knowingly and purposely fails to return such property after the time provided for such return in the rental agreement, provided that the date and time when return of the property is required and the penalty prescribed in this section is clearly stated, in bold print, in the written agreement.

2. Obtaining rental or leased property through the use of false identification constitutes prima facie evidence of the commission of this offense.

3. Failure to return the rental property within 72 hours after written demand by the lessor, sent by certified mail to the renter or lessee at the address given at the time the rental agreement was entered into or personally served on the renter or lessee, constitutes prima facie evidence of the commission of this offense.

4. If the verified value of the rented or leased property does not exceed $1,000, failure to return rental property is a Class C offense.

5. If the verified value of the rented or leased property is greater than $1,000, failure to return rental property is a Class E offense.

3.8.10 Aiding the Avoidance of Telecommunications Charges.

1. A person commits the offense of aiding the avoidance of telecommunications charges when he or she knowingly publishes the number or code of an existing, canceled, revoked expired, or nonexistent telephone credit card with the purpose of avoiding payment of lawful telecommunications charges.

2. Aiding the avoidance of telecommunications charges is a Class B offense.

3. For purposes of this section, the term "publish" means to communicate information to any one or more persons, either orally in person, by telephone, radio, or television, or in a writing of any kind, including but not limited to a letter, memorandum, circular, handbill, newspaper or magazine article, or book.

3.8.11 Unauthorized Acquisition or Transfer of Food Stamps.

1. A person commits the offense of unauthorized acquisition or transfer of food stamps if he or she knowingly:

    a. acquires, purchases, possesses, or uses any food stamp or coupon that he or she is not entitled to; or

    b. transfers, sells, trades, gives, or otherwise disposes of any food stamp or coupon to another person not entitled to receive or use it.

2. The unauthorized acquisition or transfer of food stamps with a value of less than $1,000 is Class C offense.

3. The unauthorized acquisition or transfer of food stamps with a value of greater than $1,000 is a Class E offense.

3.8.12 Waste, Sale or Trade of Food Distribution Program Foods.

1. A person commits the offense of waste, sale or trade of food distribution program foods (commodities) if he or she knowingly

    a. wastes the foods by discarding them,

    b. sells the foods to another for money, or

    c. trades the foods for other items or services.

2. Waste, sale or trade of food distribution program foods is a Class B offense.

3.8.13 Unauthorized Use of Motor Vehicle.

1. A person commits the offense of unauthorized use of a motor vehicle by knowingly operating the vehicle of another without his or her consent.
2. It is a defense that the offender reasonably believed that the owner would have consented to the offender's operation of the motor vehicle if asked.
3. Unauthorized use of a motor vehicle is a Class C offense.

3.8.14 Unlawful Use of a Computer.

1. A person commits the offense of unlawful use of a computer by knowingly or purposely
   a. obtaining the use of a computer, computer system, or computer network without consent of the owner;
   b. altering or destroying or causing another to alter or destroy a computer program or computer software without consent of the owner; or
   c. obtaining the use of, or altering or destroying a computer, computer system, computer network, or any part thereof, for the purpose of obtaining money, property, or computer services from the owner of the computer, computer system, computer network, or from any other person.
2. If the verified value of the property used, altered, destroyed, or obtained does not exceed $1,000, unlawful use of a computer is a Class C offense.
3. If the verified value of the property used, altered, destroyed, or obtained is greater than $1,000, unlawful use of a computer is a Class E offense.

3.8.15 Issuing a Bad Check.

1. A person commits the offense of issuing a bad check when the person issues or delivers a check or other order upon a real or fictitious depositary for the payment of money knowing it will not be honored by the depositary.
2. If the person issuing the check or other order has an account with the depositary, failure to make good the check or other order within 15 days after written notice of nonpayment has been received by the issuer is prima facie evidence that the person knew it would not be paid by the depositary.
3. Issuing a bad check for services, labor, or property obtained not exceeding $1,000 is a Class C offense.
4. Issuing a bad check for services, labor, or property obtained or attempted to be obtained exceeding $1,000 is a Class E offense.

3.8.16 Defrauding Creditors.

1. A person commits the offense of defrauding secured creditors if he or she knowingly destroys, conceals, encumbers, transfers, removes from the Reservation, or otherwise deals with property subject to a security interest with the purpose to hinder enforcement of that interest.
2. "**Security interest**" means an interest in personal property or fixtures that secures payment or performance of an obligation.
3. Defrauding creditors is a Class C offense.

3.8.17 Deceptive Practices.

1. A person commits the offense of deceptive practices by knowingly or purposely:
    a. causing another, by deception or threat, to execute a document disposing of property or a document by which a pecuniary obligation is incurred,
    b. making, directing another to make, or accepting a false or deceptive statement regarding the person's financial condition for the purpose of procuring a loan or credit;
    c. making or directing another to make a false or deceptive statement addressed to the public or any person for the purpose of promoting or procuring the sale of property, or
    d. obtaining or attempting to obtain property, labor, or services through the use of an invalid credit card.
2. Deceptive practices is a Class C offense.

3.8.18 Deceptive Business Practices.

1. A person commits the offense of deceptive business practices if, while in the course of engaging in a business, occupation, or profession, the person knowingly or purposely:
    a. uses or possesses for use a false weight or measure or any other device for falsely determining or recording any quantity or quality,
    b. sells, offers, exposes for sale, or delivers less than the represented quantity of any commodity or service,
    c. takes or attempts to take more than the represented quantity of any commodity or service when furnishing the weight or measure,
    d. sells, offers, or exposes for sale adulterated commodities,
    e. sells, offers, or exposes for sale mislabeled commodities, or
    f. makes a deceptive statement regarding the quantity or price of goods in any advertisement addressed to the public.
2. Deceptive business practices is a Class C offense.

3.8.19 Forgery.

1. A person commits the offense of forgery when, with purpose to defraud, the person knowingly falsely signs, makes, executes, or alters any written instrument.
2. A purpose to defraud means the purpose of causing another to assume, create, transfer, alter, or terminate any right, obligation, or power with reference to any person or property.
3. Except as provided in subsection (4), forgery is a Class C offense.
4. If the forgery is part of a common scheme, or if the value of the property, labor, or services obtained or attempted to be obtained exceeds $1,000, the offense is a Class E offense.

3.8.20 Obscuring the Identity of a Machine.

1. A person commits the offense of obscuring the identity of a machine if he or she:
    a. removes, defaces, alters, destroys, or otherwise obscures the manufacturer's serial

number or any other distinguishing identification number or mark upon any machine, vehicle, electrical device, or firearm with the purpose to conceal, misrepresent, or transfer any such machine, vehicle, electrical device, or firearm, or

b. possesses with the purpose to conceal, misrepresent, or transfer any machine, vehicle, device, or firearm knowing that the serial number or other identification number or mark has been removed or otherwise obscured.

2. Obscuring the identity of a machine is a Class C offense.

3. The fact of possession or transfer of any such machine, vehicle, electrical device, or firearm creates a presumption that the person knew the serial number or other identification number or mark had been removed or otherwise obscured.

3.8.21 Illegal Branding or Altering or Obscuring a Brand.

1. A person commits the offense of illegal branding or altering or obscuring a brand if he or she marks or brands any commonly domesticated hoofed animal or removes, covers, alters, or defaces any existing mark or brand on any commonly domesticated hoofed animal with the purpose to obtain or exert unauthorized control over said animal or with the purpose to conceal, misrepresent, transfer, or prevent identification of said animal.

2. Illegal branding or altering or obscuring a brand is a Class E offense.

3.8.22 Possessing Stolen Property.

1. A person is guilty of possessing stolen property in the first degree if he or she knowingly possesses stolen property with a verified value greater than $1000, or knowingly possesses a stolen firearm of any value. Possessing stolen property in the first degree is a Class E offense.

2. A person is guilty of possessing stolen property in the second degree if he or she knowingly possesses stolen property with a verified value that does not exceed $1000. Possessing stolen property in the second degree is a Class C offense.

3. “Stolen property” means property obtained through theft.

3.8.23 Embezzlement.

1. A person who shall, having lawful custody of property not his or her own, appropriate the same to his or her own use, with intent to deprive the owner thereof, commits the crime of embezzlement.

2. If the verified value of the property is greater than $1,000, embezzlement is a Class E offense

3. If the verified value of the property does not exceed $1,000, embezzlement is a Class C offense.

3.8.24 Unauthorized Use of Credit Cards.

1. A person commits the crime of unauthorized use of a credit card if he or she uses the card for the purpose of obtaining property or services with the knowledge that;

a. the card is stolen or forged; or

b. the card has been revoked or canceled; or

c. For any other reason his or her use is unauthorized.

2. Credit card means a writing or other evidence of an undertaking to pay for property or services

delivered or rendered to or upon the order of a designated person or bearer.

3. Unauthorized use of a credit card is a Class C offense.

Part 9 - Offenses Against Public Administration

3.9.1 DEFINITIONS. For purposes of this Part, the following definitions apply:

1. "**Administrative proceeding**" means any Tribal proceeding the outcome of which is required to be based on a record or documentation prescribed by law or in which a law or a regulation is particularized in its application to an individual.
2. "**Benefit**" means gain or advantage or anything regarded by the beneficiary as gain or advantage, including benefit to any other person or entity in whose welfare the beneficiary is interested.
3. "**Official proceeding**" means a proceeding heard or that may be heard before any legislative, judicial, administrative, or other governmental agency or official authorized to take evidence under oath, including any referee, hearing examiner, commissioner, notary, or other person taking testimony or deposition in connection with the proceeding.
4. "**Pecuniary benefit**" is benefit in the form of money, property, commercial interests, or anything else the primary significance of which is economic gain.
5. "**Petition**" mean a list of signatures submitted to any Tribal government official, program or office pursuant to any ordinance, resolution or constitutional provision providing for the submission of such signatures for the purpose of initiating or requesting governmental action.
6. "**Tribal public servant**" means any officer or employee of the Tribal government including but not limited to a member of the Board of Directors, a judge, anyone who has been elected or designated to become a Tribal public servant, or any person serving as a juror, administrator, executor, personal representative, guardian, or court-appointed fiduciary.

3.9.2. Bribery.

1. A person commits the offense of bribery by knowingly or purposely offering, conferring, agreeing to confer upon another, soliciting, accepting, or agreeing to accept from another, any benefit, including pecuniary benefit, as consideration for:
    a. the recipient's decision, opinion, recommendation, vote, or other exercise of discretion as a Tribal public servant or voter,
    b. the recipient's decision, vote, recommendation, or other exercise of official discretion in a Tribal judicial or administrative proceeding, or
    c. a violation of a known duty as a Tribal public servant.
2. It is not a defense that a person whom the offender sought to bribe was not qualified to act in the desired way.
3. Bribery is a Class D offense.
4. A person convicted of the offense of bribery shall forever be disqualified from holding any position as a Tribal public servant.

3.9.3 Improper Influence in Official Matters.

1. A person commits the offense of improper influence by purposely or knowingly:

a. threatening harm to any person, the person's spouse, child, parent, or sibling, or the person's property with the purpose to influence the person's decision, opinion, recommendation, vote or other exercise of discretion as a Tribal public servant or voter;

b. threatening harm to any Tribal public servant, to the Tribal public servant's spouse, child, parent, or sibling, or to the public servant's property with the purpose to influence the Tribal public servant's decision, opinion, recommendation, vote or other exercise of discretion in a judicial or administrative proceeding;

c. threatening harm to any Tribal public servant, the public servant's spouse, child, parent, or sibling, or the person's property with the purpose to influence the person to violate her or his duty, or

d. privately talking about the circumstances of a pending or potential controversy with any Tribal public servant who has or will have official discretion in a judicial or administrative proceeding or any other communication with such Tribal public servant designed to influence or with the potential to influence the outcome of such proceedings on the basis of considerations other than those authorized by Tribal law.

2. It is not a defense that a person whom the offender sought to influence was not qualified to act in the desired way.

3. Improper influence in official matters is a Class D offense.

3.9.4 Compensation for Past Official Behavior.

1. A person commits an offense under this section if he or she knowingly solicits, accepts, or agrees to accept any pecuniary benefit as compensation for having, as a Tribal public servant, given a decision, opinion, recommendation, or vote favorable to another, for having exercised a discretion in another's favor, or for having violated his or her duty. A person commits an offense under this section if he or she knowingly offers, confers, or agrees to confer compensation which is prohibited by this section.

2. Compensation for past official behavior is a Class C offense.

3.9.5 Gifts to Tribal Public Servants by Persons Subject to their Jurisdiction.

1. No Tribal public servant in any department or agency exercising a regulatory function, conducting inspections or investigations, carrying on a civil or criminal litigation on behalf of Tribal government, or having custody of prisoners shall solicit, accept or agree to accept any pecuniary benefit from a person known to be subject to such regulation, inspection, investigation, or custody or against whom such litigation is known to be pending or contemplated.

2. No Tribal public servant having any discretionary function to perform in connection with contracts, purchases, payments, claims, or other pecuniary transactions of the government shall solicit, accept, or agree to accept any pecuniary benefit from any person known to be interested in or likely to become interested in any such contract, purchase, payment, claim, or transaction.

3. No Tribal public servant having judicial or administrative authority and no Tribal public servant employed by a Tribal court having such authority or participating in the enforcement of its decision shall solicit, accept, or agree to accept any pecuniary benefit from a person known to be interested in or likely to become interested in any matter before such Tribal public servant or tribunal with which he or she is associated.

3. This section shall not apply to:

a. fees or payments prescribed by law to be received by a Tribal public servant or any other

benefit for which the recipient gives legitimate consideration or to which he or she is otherwise entitled; or

b. trivial benefits incidental to personal, professional, or business contacts and involving no substantial risk of undermining official impartiality.

4. No person shall knowingly confer or offer or agree to confer any benefit prohibited by subsections (1) through (3).

5. An offense committed under this section is a Class C offense.

3.9.6. Perjury.

1. A person commits the offense of perjury by knowingly making in any Tribal judicial or administrative proceeding a false statement under oath or equivalent affirmation, or by swearing or affirming the truth of a false statement previously made when the statement is material to the proceedings.

2. Perjury is a Class D offense.

3.9.7 False Swearing.

1. A person commits the offense of false swearing by knowingly making a false statement under oath or equivalent affirmation, or swearing or affirming the truth of such a statement previously made when the person does not believe the statement to be true and:

a. the falsification occurs in an official proceeding;

b. the falsification is purposely made to mislead a Tribal public servant in performing his or her official function; or

c. the statement is one which is required by law to be sworn or affirmed before a notary or other person authorized to administer oaths.

2. False swearing is a Class C offense.

3.9.8 Unsworn Falsification to Authorities.

1. A person commits an offense under this section if, with purpose to mislead a Tribal public servant in performing his or her official function, he or she

a. makes any written false statement which he or she does not believe to be true,

b. purposely creates a false impression in a written application for any pecuniary or other benefit by omitting information necessary to prevent statements therein from being misleading,

c. submits or invites reliance on any writing which he or she knows to be forged, altered, or otherwise lacking in authenticity, or

d. submits or invites reliance on any sample, specimen, map, boundary mark, or other object which he or she knows to be false.

2. Unsworn falsification is a Class B offense.

3.9.9 Petition Misconduct

1. A person commits an offense under this section if he or she

a. signs a petition with a name of another person or fictitious person, or any name other than his or her true name; or

b. signs a petition knowing that he or she is not eligible to sign under applicable Tribal Ordinance, Resolution or Constitutional provision; or

c. in signing a petition, makes a false statement as to his or her residence, age, tribal membership or other qualifications necessary to sign the petition; or

d. knowing that a petition contains false signatures or statements, files the petition, or puts the petition off with intent that it should be filed, as a true and genuine petition; or

e. for any consideration or gratuity or promise thereof, signs or declines to sign any petition; or

f. provides or receives consideration for soliciting or procuring signatures on a petition if any part of the consideration is based on the number of signatures solicited or procured, or offers to provide or agrees to receive such consideration any of which is based on the number of signatures solicited or procured; or

g. gives or offers any consideration or gratuity to any person to induce him or her to sign or not to sign any petition; or

h. interferes with or attempts to interfere with the right of any voter to sign or not to sign a petition by threats, intimidation, or any corrupt means or practice.

2. Petition misconduct is a Class C offense

3.9.10 False Alarms to Agencies of Public Safety.

1. A person commits an offense under this section if he or she knowingly causes a false alarm of fire or other emergency to be transmitted to or within any organization, Tribal or otherwise, official or volunteer, which deals with emergencies involving danger to life or property.

2. False alarms to public agencies is a Class C offense.

3.9.11 False reports to law enforcement officers.

1. A person commits the offense of giving false reports to law enforcement officers by knowingly

a. giving false information to any law enforcement officer with the purpose to implicate another,

b. reporting to a law enforcement officer an offense or other incident within their concern, knowing that the alleged offense or incident did not occur, or

c. pretending to furnish such officers with information relating to an offense or incident when the person does not have information relating to such offense or incident.

2. Giving false reports to law enforcement officers is a Class C offense.

3.9.12 Tampering with witnesses, informants, or physical evidence.

1. A person commits the offense of tampering if, believing that an official proceeding or investigation is pending or about to be instituted, the person knowingly or purposely attempts to or does

a. induce or otherwise cause a witness or informant to testify or inform falsely,

b. withhold any testimony, information, document or other material evidence,

c. cause a witness to elude legal process summoning the witness to testify or supply evidence, or

d. alter, destroy, conceal, or remove any record, document, or other physical object in order to impair its availability or reliability in such proceeding or investigation.

2. Tampering is a Class D offense over which the Tribes have exclusive jurisdiction.

3.9.13 Impersonating a Tribal public servant.

1. A person commits the offense of impersonating a Tribal public servant by knowingly and purposely pretending to hold a position as a public servant of the Tribes as a means of inducing another to submit to the person's authority or otherwise act in reliance upon such representation.

2. Impersonating a Tribal public servant is a Class B offense.

3.9.14 False claims to Tribal agencies.

1. A person commits an offense under this section if he or she purposely and knowingly presents for allowance or for payment a claim already paid by another or a false or fraudulent claim, bill, account, voucher, or writing to a Tribal agency, Tribal public servant, or to a contractor authorized to allow of pay claims presented to a Tribal agency, if genuine.

2. A false claim is a Class D offense.

3.9.15 Resisting arrest.

1. A person commits the offense of resisting arrest by knowingly preventing or attempting to prevent a law enforcement officer from making an arrest by:

   a. using or threatening to use physical force or violence against the law enforcement officer or another; or

   b. using any other means which creates a risk of causing physical injury to a law enforcement or another.

2. It is no defense to a charge of resisting arrest that the arrest was unlawful, provided the law enforcement officer was acting under the color of his or her official authority.

3. Resisting arrest is a Class D offense.

3.9.16 Obstructing a law enforcement officer or other Tribal public servant.

1. A person commits the offense of obstructing a law enforcement officer or other Tribal public servant if he or she knowingly obstructs, impairs, or hinders the enforcement of the criminal law, the preservation of the peace, or the performance of a Tribal governmental function.

2. It is no defense to a charge under this section that the law enforcement officer or other Tribal public servant was acting in an illegal manner, provided he was acting under the color of his or her official authority.

3. Obstructing a law enforcement officer or other Tribal public servant is a Class C offense.

3.9.17 Obstructing justice.

1. For the purpose of this section, "an offender" means a person who has been or is liable to be arrested, charged, convicted, or punished for a Tribal offense.
2. A person commits the offense of obstructing justice if, knowing another person is an offender, he or she purposely:
    a. harbors or conceals an offender;
    b. warns an offender of impending discovery or apprehension, except this does not apply to a warning given in connection with an effort to bring an offender into compliance with the law;
    c. provides an offender with money, transportation, a weapon, disguise, or other means of avoiding discovery or apprehension;
    d. prevents or obstructs, by means of force, deception, or intimidation, anyone from performing an act that might aid in the discovery or apprehension of an offender;
    e. supports, by act of concealment, alteration, or destruction, any physical evidence that might aid in the discovery or apprehension of an offender; or
    f. aids an offender who is subject to detention to escape from such detention.
3. Obstructing justice is a Class C offense.

3.9.18 Violation of a protective order.

1. A person to whom a protective order is directed commits the offense of violating a protective order by, with knowledge of the order, knowingly or purposely engaging in any conduct proscribed by the protective order or by failing to meet any requirement of the order.
2. The person requesting the protective order or for whose protection it was issued may not be charged with violation of this section.
3. The person against whom the protective order is directed may not be convicted of a violation of the order if the person who requested the protective order initiates the contact.
4. Violation of a protective order is a Class D offense.

3.9.19 Escape.

1. A person commits the offense of escape by:
    a. unlawfully removing herself or himself from official detention or failing to return to detention following temporary leave granted for a specific purpose or limited time period;
    b. aiding another person to escape from official detention; or
    c. knowingly procuring, making, possessing or providing a person in official detention with anything which may facilitate escape.
2. Escape is a Class D offense.

3.9.20 Providing contraband.

1. A person commits the offense of providing contraband by knowingly providing a person in official Tribal detention with alcoholic beverages, implements of escape or any other items or substances which the person knows are unlawful or improper for the detainee to possess.

2. Providing contraband is a Class D offense.

3.9.21. Bail-jumping.

1. A person commits the offense of bail-jumping if, having been released on bail, or on the person's own recognizance, by Tribal Court order or other lawful Tribal authority upon condition that the person subsequently appear on a charge of an offense, the person fails, without just cause, to appear in person or by counsel at the time and place lawfully designated for the person's appearance.
2. Bail-jumping constitutes a Class D offense.

3.9.22 Criminal contempt.

1. A person commits the offense of criminal contempt by knowingly engaging in any of the following conduct:
    a. disorderly, contemptuous, or insolent behavior committed during the sitting of the Tribal Court or the Court of Appeals, in the immediate view and presence of the court, and directly tending to interrupt its proceedings or to impair the respect due its authority;
    b. breaching the peace by causing a disturbance directly tending to interrupt the proceedings of the Tribal Court or the Court of Appeals;
    c. purposely disobeying or refusing any lawful process or other mandate of Tribal Court or the Court of Appeals;
    d. unlawfully refusing to be sworn as a witness in any Tribal Court proceeding or, after being sworn, refusing to answer any legal and proper questions;
    e. purposely publishing a false or grossly inaccurate report of a Tribal Court proceeding; or
    f. purposely failing to obey any mandate, process, or notice relative to serving as a juror.
2. Criminal contempt is a Class C offense.

3.9.23 Official misconduct.

1. A Tribal public servant commits the offense of official misconduct when in his or her official capacity he or she commits any of the following acts:
    a. purposely or negligently fails to perform any mandatory duty as required by law or by a court of competent jurisdiction;
    b. knowingly performs an act in his or her official capacity which he or she knows is forbidden by law;
    c. with the purpose to obtain advantage for himself or herself or another, performs an act in excess of his or her lawful authority;
    d. solicits or knowingly accepts for the performance of any act a fee or reward which he or she knows is not authorized by law.
2. Official misconduct is a Class D offense.
3. A public servant who has been charged as provided in this section may be suspended from his or her office without pay pending final judgment.

3.9.24 Misuse of Tribal Funds

1. Any person who shall, being a tribal employee or other person charged with receipt, safekeeping, transfer or disbursement of tribal funds, without lawful authority, appropriates funds to his or her own use or the use of another, or who shall otherwise handle tribal funds in a manner not authorized by law, shall commit the crime of misuse of public funds.
2. If the amount of the Tribal funds misused is greater than $1,000, misuse of tribal funds is a Class E offense
3. If the amount of the tribal funds misused does not exceed $1,000, misuse of tribal funds is a Class C offense.

Part 10 - Offenses Against Public Order

3.10.1 DISORDERLY CONDUCT.

1. A person commits the offense of disorderly conduct by knowingly disturbing the peace of another by:
   a. knowingly uttering fighting words with a direct tendency to violence, challenging to fight, or fighting;
   b. making loud or unusual noises;
   c. using physically threatening, profane, or abusive language;
   d. discharging firearms, except at a shooting range during established hours of operation;
   e. obstructing vehicular or pedestrian traffic on a public way without good cause;
   f. rendering the free entrance or exit to public or private places impassable without good cause; or
   g. disturbing or disrupting any lawful assembly or public meeting after having been asked to cease such disturbance or disruption or leave the premises by one in authority at the assembly or meeting.
2. Disorderly conduct is a Class B offense.

3.10.2. Riot.

1. A person commits the offense of riot if he or she purposely disturbs the peace by engaging in an act of violence as part of an assemblage of five or more persons, which act or threat presents a clear and present danger of or results in damage to property or injury to persons.
2. Riot is a Class C offense.

3.10.3 Public nuisance.

1. A person commits the offense of public nuisance by knowingly creating, conducting, or maintaining a public nuisance.
2. "**Public nuisance**" includes, but is not limited to:
   a. a condition which endangers safety or health, is offensive to the senses, or obstructs the free use of property so as to interfere with the comfortable enjoyment of life or property;

b. persons gathering on any premise for the purpose of engaging in unlawful conduct;

c. a condition making passage of any public right-of-way, or waters used by the public, dangerous; or

d. a person appearing in a public place in an intoxicated condition such that the person is unable to care for himself of herself.

3. Uses of Reservation lands and waters by Tribal members or the Tribes, whether agricultural operations or otherwise, existing prior to nearby residential or commercial development or population increase, will not be considered a public nuisance.

4. Public nuisance is a Class A offense with a maximum fine of $1000. In addition, the person creating the public nuisance may be ordered to abate the nuisance or pay all costs of abatement.

3.10.4 Creating a hazard.

1. A person commits the offense of creating a hazard by knowingly:

a. discarding in any place where it might attract children a container having a compartment with a capacity of more than 1.5 cubic feet and an attached door or lid that automatically locks or otherwise securely fastens when closed and cannot be easily opened from the inside;

b. maintaining any property under her or his control in a manner which could attract children and which constitutes a potential health or safety hazard to the children, without taking proper steps to restrict access to the area;

c. failing to cover or fence with suitable protective materials a well, cistern, cesspool, mine shaft, or other hole of a depth of 4 or more feet and a width of 12 or more inches located upon property in the person's possession; or

d. being the owner or otherwise having possession of any property owning or possessing any property upon which industrial, construction, or farming equipment is located and allowing the equipment to be maintained or operated in an unsafe manner or condition.

2. Creating a hazard is a Class C offense.

3.10.5 Harming a police dog.

1. A person commits the offense of harming a police dog if he or she purposely or knowingly shoots, kills, or otherwise injures a police dog being used by a Tribal law enforcement officer in discharging or attempting to discharge any legal duty in a reasonable and proper manner.

2. Harming a police dog is a Class C offense.

3.10.6. Causing animals to fight.

1. A person commits the offense of causing animals to fight by:

a. owning, possessing, keeping, or training any animal with the intent that such animal fight or engage in an exhibition of fighting with another animal;

b. allowing or causing any animal to fight with another animal or causing any animal to menace or injure another animal for the purpose of sport, amusement, or gain;

c. knowingly permitting any act in violation of subsection (1)(a) or (1) (b) to take place on any premises under the person's charge or control, or aids or abets any such act; or

d. participating in any exhibition in which animals are fighting for the purpose of sport, amusement, or gain.

2. Causing animals to fight is a Class D offense.

3.10.7 Dog Control Violations. A person commits an offense if they violate any of the criminal provisions of the Dog Control Code, Ordinance 113. Sentencing for violations of the Dog Control Code shall be in accordance with Section 13 of Ordinance 113.

3.10.8 Unlawful camping.

1. It shall be unlawful for any person to camp, occupy camp facilities or use camp paraphernalia in the following areas, except as otherwise provided by ordinance:

   a. Any park, unless park or park area is specifically designated for camping;

   b. Any public or tribal street;

   c. Any publicly or tribally owned parking lot or publicly owned area, improved or unimproved, unless the area is specifically designated for camping.

2. For purpose of this Ordinance, “camp” means occupying a place, with or without a vehicle, for the purpose of sleeping overnight or temporarily residing.

3. Unlawful camping is a Class A offense with a maximum fine of $75.00.

Part 11- Communications Offenses

3.11.1. PROMOTING OBSCENE ACTS OR MATERIALS.

1. A person commits the offense of promoting obscene acts or materials when, with knowledge of the obscene nature thereof, he or she purposely or knowingly:
   a. sells, delivers, or provides or offers or agrees to sell, deliver, or provide any obscene writing, picture, record, or other representation or embodiment of the obscene to anyone under the age of 18;
   b. presents or directs an obscene play, dance, or other performance, or participates in that portion thereof which makes it obscene, to anyone under the age of 18;
   c. publishes, exhibits, or otherwise makes available anything obscene to anyone under the age of 18;
   d. performs an obscene act or otherwise presents an obscene exhibition of his body to anyone under the age of 18;
   e. creates, buys, procures, or possesses obscene matter or material with the purpose to disseminate it to anyone under the age of 18;
   f. advertises or otherwise promotes the sale of obscene material or materials represented or held out by him to be obscene.
2. A thing is obscene if:
   a. I. it is a representation or description of perverted ultimate sexual acts, actual or simulated;
      ii. it is a patently offensive representation or description of masturbation, excretory functions, or lewd exhibition of the genitals; and taken as a whole, the material

i. applying contemporary community standards, appeals to the prurient interest in sex;

ii. portrays conduct described in subsection (2)(a) in a patently offensive way; and

iii. lacks serious literary, artistic, political, or scientific value.

3. In any prosecution for an offense under this section, evidence shall be admissible to show:

a. the predominant appeal of the material and what effect, if any, it would probably have on the behavior of people;

b. the artistic, literary, scientific, educational, or other merits of the material;

c. the degree of public acceptance of the material in the community;

d. appeal to prurient interest or absence thereof in advertising or other promotion of the material; or

e. the purpose of the author, creator, publisher, or disseminator.

4. Promoting obscene acts or materials is a Class D offense.

3.11.2. Public display or dissemination of obscene material to minors.

1. A person having custody, control or supervision of any commercial establishment or newsstand may not knowingly or purposely:

a. display obscene material to minors in such a way that minors, as a part of the invited public, will be able to view the material; provided, however, that a person is considered not to have displayed obscene material to minors if the material is kept behind devices commonly known as blinder racks so that the lower two-thirds of the material is not exposed to view or other reasonable efforts were made to prevent view of the material by a minor;

b. sell, furnish, present, distribute, or otherwise disseminate to a minor or allow a minor to view, with or without consideration, any obscene material; or

c. present to a minor or participate in presenting to a minor, with or without consideration, any performance that is obscene to minors.

2. A person does not violate this section if:

a. he or she had reasonable cause to believe the minor was 18 years of age. "**Reasonable cause**" includes but is not limited to being shown a draft card, driver's license, marriage license, birth certificate, educational identification card, governmental identification card, or other official or apparently official card or document purporting to establish that the person is 18 years of age;

b. the person is, or is acting as, an employee of a public school, college, or university or a retail outlet affiliated with the serving the educational purposes of a school, college, or university and the material or performance was disseminated in accordance with policies approved by the governing body of the institution;

c. the person is an officer, director, trustee, or employee of a public library or museum and the material or performance was acquired by the library or museum and disseminated in accordance with policies approved by the governing body of the library or museum;

d. an exhibition in a state of nudity is for a bona fide scientific or medical purpose for a bona fide school, library, or museum; or

e. the person is a retail sales clerk with no financial interest in the material or performance or in the establishment displaying or selling the material or performance.

3. Public display or dissemination of obscene material to minors is a Class D offense.

3.11.3. Violation of privacy in communications.

1. A person commits the offense of violating privacy in communication who knowingly or purposely:
    a. communicates with any person by telephone and uses any obscene, lewd or profane language, suggests any lewd or lascivious act, or threatens to inflict injury or physical harm to the person or property of any person, intending that the communication terrify, intimidate, threaten, harass, annoy, or offend the person;
    b. uses a telephone to extort anything of value from any person or to disturb by repeated telephone calls the peace, quiet, or right of privacy of any person at the place where the telephone call or calls are received;
    c. records or causes to be recorded any conversation by use of hidden electronic or mechanical devices which reproduce conversation without the knowledge of all parties to the conversation, unless:
        i. the recording is of a person speaking at a public meeting, or
        ii. the person making the recording has given warning that the conversation is being recorded, or
        iii. the recording is specifically authorized in advance by a Tribal Court Order using the standards set forth for search warrants.
    d. reading or disclosing any communications addressed to another person without the permission of such person, unless directed by a court order to read or disclose such communications.
2. Violating privacy in communications is a Class C offense.

3.11.4. Bribery in contests.

1. A person commits the offense of bribery in contests if he or she purposely or knowingly offers, confers, or agrees to confer upon another or solicits, accepts, or agrees to accept from another:
    a. any pecuniary benefit as a consideration for the recipient's failure to use his or her best efforts in connection with any professional or amateur athletic contest, sporting event, or exhibition; or
    b. any benefit as consideration for a violation of a known duty as a person participating in, officiating, or connected with any professional or amateur athletic contest, sporting event, or exhibition.
2. Bribery in contests is a Class E offense.

Part 12 - Weapons Offenses

3.12.1. CARRYING CONCEALED WEAPON.

1. A person commits the offense of carrying a concealed weapon by knowingly carrying or bearing a dirk, dagger, pistol, revolver, slingshot, sword cane, billy club, knuckles made of any metal or other hard substance, knife having a blade at least 4 inches long, non-safety type razor, or any other deadly weapon which is wholly or partially covered by the clothing or wearing apparel of the person carrying the weapon, or is carried any place within the occupant compartment of a motor vehicle.
2. Subsection (1) does not apply to:

a. any law enforcement officer;

b. a person authorized by a judge of the Tribal Court to carry a concealed weapon;

c. a person permitted under state and tribal law to carry a concealed weapon; or

d. the carrying of arms on one's own premises or at one's home or place of business.

3. Carrying a concealed weapon is a Class C offense.

3.12.2 Possession of deadly weapon by prisoner. Every prisoner committed to the Tribal jail, who while at the jail, while being conveyed to or from the jail, or while under the custody of prison or jail officers, or employees, purposely or knowingly possesses or carries upon his person or has under his custody or control without lawful authority a dirk, dagger, pistol, revolver, slingshot, sword cane, billy, knuckles made of metal or hard substance, knife, razor not including a safety razor, or other deadly weapon is guilty of a Class D offense.

3.12.3 Carrying a concealed weapon while under the influence.

1. A person commits the offense of carrying a concealed weapon while under the influence if he or she purposely or knowingly carries a concealed weapon while under the influence of an intoxicating substance. For the purpose of this statute "under the influence" means that as a result of taking into the body alcohol, drugs, or any combination of alcohol and drugs, a person's ability to safely operate a weapon It is not a defense that the person had is a person permitted to carry a concealed weapon under section 3.12.1(2)©).

2. Carrying a concealed weapon while under the influence is a Class D offense.

3.12.4 Carrying concealed weapon in a prohibited place.

1. A person commits the offense of carrying a concealed weapon in a prohibited place if he or she purposely or knowingly carries a concealed weapon in:

   a. a building owned or leased by the federal, state, local government, or Tribes or any governmental entity;

   b. a bank, credit union, savings and loan institution, or similar institution; or

   c. a commercial establishment in which alcoholic beverages are sold, dispensed, and consumed.

2. It is not a defense that the person had the permission of the Tribal Court or a state permit to carry a concealed weapon.

3. Carrying a concealed weapon in a prohibited place is a Class D offense.

3.12.5 Carrying handgun in occupant compartment of motor vehicle.

1. A person commits an offense under this section if he or she knowingly carries or bears a handgun, pistol or revolver in any location within the occupant compartment of a motor vehicle.

2. the occupant compartment of a motor vehicle includes any place within a motor vehicle that is accessible from the driver or passenger seats, including any glove or utility compartment, but does not include a trunk that is not accessible to the occupant compartment.

3. Subsection (1) shall not apply to:

   a. any law enforcement officer;

   b. a person permitted under tribal or state law to carry a concealed weapon.

4. Carrying a handgun in occupant compartment of a motor vehicle is a Class C offense.

3.12.6 Carrying or bearing a switchblade knife.

1. Every person who knowingly carries or bears upon his or her person, who carries or bears within or on a motor vehicle or other means of conveyance operated by him or her or who owns, possesses, uses, stores, gives away, sells, or offers for sale a switchblade knife shall be guilty of a Class C offense.
2. A bona fide collector whose collection is registered with the Tribal Police is exempted from the provisions of this section.
3. For the purpose of this section, a switchblade knife is defined as any knife which has a blade 1 and ½ inches long or longer which opens automatically by hand pressure applied to a button, spring, or other device in the handle of the knife.
4. Carrying or bearing a switchblade knife is a Class C offense.

3.12.7 Reckless or malicious use of explosives.

1. Every person who shall recklessly or maliciously use, handle, or have in his or her possession any explosive substance whereby any human being is intimidated, terrified, or endangered shall be guilty of a Class C offense.
2. "**Explosive**" means any chemical compound that is commonly used or intended for the purpose of producing a destructive effect and which contains compounds or ingredients in such proportions, quantities, or packing that ignition by fire, friction, concussion, percussion, or a detonator of any part of the compound or mixture may cause a destructive effect on surrounding objects or persons.
3. Reckless or malicious use of explosives is a Class C offense.

3.12.8 Possession of a destructive device.

1. A person who, with the purpose to commit a Class E offense, has in his or her possession any destructive device on a public street or highway, in or near a theater, hall, school, college, church, hotel, Tribally-owned building, or any other public building, or private habitation, in, on or near any aircraft, railway passenger train, vessel engaged in carrying passengers for hire, or other public place ordinarily passed by human beings is guilty of the offense of possession of a destructive device.
2. "**Destructive device**" as used in this section includes, but is not limited to the following weapons:
    a. a projectile containing an explosive or incendiary material or any other similar chemical substance, including but not limited to that which is commonly known as tracer or incendiary ammunition, except tracer ammunition manufactured for use in shotguns;
    b. a bomb, grenade, explosive missile, or similar device or a launching device therefor;
    c. a weapon of a caliber greater than .60 caliber which fires fixed ammunition or any ammunition therefor, other than a shotgun or shotgun ammunition;
    d. a rocket, rocket-propelled projectile, or similar device of a diameter greater than .60 inch or a launching device therefor and a rocket, rocket-propelled projectile or similar device containing an explosive or incendiary material or any other similar chemical substance other than the propellant for the device, except devices designed primarily for emergency or distress signaling purposes; or
    e. a breakable container which contains a flammable liquid with a flash point of 150 degrees

Fahrenheit or less and which has a wick or similar device capable of being ignited, other than a device which is commercially manufactured primarily for the purpose of illumination.

3. For purposes of this section, the term "**destructive device**" does not include fireworks that are not prohibited by the Fireworks Code, Ordinance 52.

4. Possession of a destructive device is a Class E offense.

3.12.9 Possession of explosives.

1. A person commits the offense of possession of explosives if he or she possesses, manufactures, transports, buys, or sells an explosive compound, flammable material, or timing, detonating, or similar device for use with an explosive compound or incendiary device and

   a. has the purpose to use such explosive material or device to commit an offense, or

   b. knows that another has the purpose to use such explosive material or device to commit an offense.

2. For purposes of this section, the term "explosives" does not include fireworks that are not prohibited by the Fireworks Code, Ordinance 52.

3. Possession of explosives is a Class E offense.

3.12.10 Possession, transportation, sale or discharge of prohibited fireworks.

1. A person commits the offense under this section if he or she possesses, transports, discharges, sells, or offers for sale any fireworks prohibited by Ordinance 52, Fireworks Code.

2. "**Fireworks**" means any device containing any combustible or explosive substance for the purpose of producing a visible or audible display of combustion, explosion, deflagration or detonation, but not including any firearms.

3. Possession of prohibited fireworks is a Class C offense.

3.12.11 Possession of a silencer.

1. A person commits the offense of possession of a silencer if he or she possesses, manufactures, transports, buys, or sells a silencer and has the purpose to use it to commit an offense or knows that another person has such a purpose.

2. Possession of a silencer is a Class E offense.

3.12.12 Possession of a sawed-off firearm.

1. A person commits the offense of possession of a sawed-off firearm if he or she knowingly possesses a rifle or shotgun that when originally manufactured had a barrel length of:

   a. 16 inches or more and an overall length of 26 inches or more in the case of a rifle; or

   b. 18 inches or more and an overall length of 26 inches of more in the case of a shotgun; and

   c. the firearm has been modified in a manner so that the barrel length, overall length, or both are less than specified in subsection (1)(a) or (1)(b).

2. The barrel length is the distance from the muzzle to the rear-most point of the chamber.

3. This section does not apply to firearms possessed:

a. for educational or scientific purposes in which the firearms are incapable of being fired;

b. by a person who has a valid federal tax stamp for the firearm, issued by the Bureau of Alcohol, Tobacco, and Firearms; or

c. by a bona fide collector of firearms if the firearm is a muzzle loading, sawed-off firearm manufactured before 1900.

4. Possession of a sawed-off firearm is a Class D offense.

3.12.13 Firing firearms.

1. Except as provided in subsections (2) and (3), every person who purposely shoots or fires off a gun, pistol, or any other firearm within the limits of any town, city, Tribal housing or community area, or any private enclosure which contains a dwelling house is guilty of a Class A offense.

2. Firearms may be discharged at an indoor or outdoor rifle, pistol, or shotgun shooting range located within the limits of a town, city, Tribal housing or community area, or an enclosure that contains a private dwelling.

3. Subsection (1) does not apply if the discharge of a firearm is justifiable under Part 3 of this Chapter.

3.12.14 Use of firearms by children under 14 years.

1. Unless a child is accompanied by a person having charge or custody of the child or under the supervision of a qualified firearms safety instructor who has been authorized by the parent or guardian, it is unlawful for a parent, guardian, or other person having charge of custody of a minor child under the age of 14 years to permit the minor child to carry or use in public any firearms.

2. "**Public places**" means any place to which the public, Tribal licensees or invitees, or any group of substantial size has access.

3. Any parent, guardian, or other person having charge or custody of a minor child under the age of 14 years violating the provisions of this section is guilty of a Class A offense.

Part 13 - Traffic Violations

3.13.1 WASHINGTON STATE PROVISIONS INCORPORATED. The following sections of the Revised Code of Washington as presently constituted or hereafter amended are incorporated herein as provisions of this ordinance and shall apply to all persons subject to the jurisdiction of the Tulalip Tribal Court: RCW Chapters 46.04, 46.37, 46.61, and RCW sections 46.09.020, 46.09.120, 46.09.130, 46.09.140, 46.09.190, 46.12.210, 46.12.215, 46.12.220, 46.20.001, 46.20.015, 46.20.017, 46.20.024, 46.20.025, 46.25.050, 46.52.010, 46.52.020, 46.52.030, 46.52.035, 46.52.040. In incorporating the above statutes, the Tulalip Tribes do not incorporate any State agency interpretation of such statutes, and State case law shall not be controlling authority in the interpretation of such statutes by the Tribal Court.

3.13.2. Amendments. Amendments, additions, deletions or recodifications of such provisions by the State of Washington after the enactment of this Ordinance shall become a part hereof for all purposes unless the Board of Directors by ordinance or resolution specifically provides otherwise.

3.13.3. Motor Vehicle Offenses. It is unlawful for any person to operate, drive or move a motor vehicle on the roads of the Tulalip Indian Reservation in violation of any of the requirements of Section 3.13.1 or to do any act forbidden or fail to perform any act required by Section 3.13.1.

3.13.4 Definitions. As contained in the above-cited motor vehicle laws, "**highways**", "**state highways**" and "**public highways**" shall be construed to mean "**all roads, public and private, within the jurisdiction of the Tulalip Tribes**", and "**county jail**" or "**jail**" shall be construed to mean "**tribal or other jail authorized by the Tribes to receive prisoners**". Reference to any "**court**" shall be construed to mean the "**Tulalip Tribal Court**".

3.13.5 Inapplicable Provisions. Any of the provisions or portions of the provisions of the Revised Code of Washington listed above which, by their nature, would not apply to the Tulalip Tribes, Reservation, or Tribal Court, or the incorporation of which would undermine the underlying principles and purposes of this Code, or which are inconsistent with the provisions of this Chapter or this Code are not incorporated herein.

3.13.6 Driving While License Suspended or Revoked. Any person who drives a motor vehicle on any roads within the Tulalip Reservation at a time when his privilege to do so is suspended or revoked by the Tribal Court or any other jurisdiction with lawful authority, shall be guilty of Driving While License Suspended or Revoked, which shall be a civil infraction subject to the penalties as provided in this title, except that second and subsequent offenses committed by persons subject to the criminal jurisdiction of the Court shall be a Class C criminal offense.

3.13.7 Negligent Driving. Any person who drives any vehicle in a negligent manner without due care and caution or in such a manner as to endanger or be likely to endanger any persons or property shall be guilty of negligent driving, which shall be a Class B criminal offense for persons subject to the criminal jurisdiction of the Tulalip Tribes and for all other persons shall be a civil infraction subject to the penalties as provided in this title.

3.13.8 Negligent Driving Lesser Included Offense. The offense of operating a vehicle in a negligent manner shall be considered to be a lesser offense than, but included in the offense of operating a vehicle in a reckless manner.

3.13.9 Financial Responsibility- Liability Insurance Requirement.

1.a. No person may operate a motor vehicle on roads within the Tulalip Reservation unless the person is insured under a motor vehicle liability policy, or equivalent coverage by bond or self insurance, with liability limits of not less than twenty-five thousand dollars because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, to a limit of not less than fifty thousand dollars because of bodily injury to or death of two or more persons in any one accident, and if the accident has resulted in injury to, or destruction of, property to a limit of not less than ten thousand dollars because of injury to or destruction of property of others in any one accident. Written proof of financial responsibility for motor vehicle operation must be provided on the request of a law enforcement officer.

b. When asked to do so by a law enforcement officer, failure to display an insurance identification card creates a presumption that the person does not have motor vehicle insurance.

c. Failure to provide proof of motor vehicle insurance is a traffic infraction and is subject to penalties as set forth in this title.

2. If a person cited for a violation of subsection (1) of this section appears in person before the court and provides written evidence that at the time the person was cited, he or she was in compliance with the liability insurance requirements of subsection (1) of this section, the citation shall be

dismissed. In lieu of personal appearance, a person cited for a violation of subsection (1) of this section may, before the date scheduled for the person's appearance before the court, submit by mail to the court written evidence that at the time the person was cited, he or she was in compliance with the financial responsibility requirements of subsection (1) of this section, in which case the citation shall be dismissed without cost, except that the court may assess court administrative costs of twenty-five dollars at the time of dismissal.

3.13.10 Implied Consent--Suspension of Driving Privileges.

1. Any person who operates a motor vehicle within the jurisdiction of the Tulalip Tribes is deemed to have given consent, subject to the provisions of RCW 46.61.506, to a test or tests of his or her breath or blood for the purpose of determining the alcohol concentration or presence of any drug in his or her breath or blood if arrested for any offense where, at the time of the arrest, the arresting officer has reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug or was in violation of RCW 46.61.503.

2. The test or tests of breath shall be administered at the direction of a law enforcement officer having reasonable grounds to believe the person to have been driving or in actual physical control of a motor vehicle within the jurisdiction of the Tulalip Tribes while under the influence of intoxicating liquor or any drug or the person to have been driving or in actual physical control of a motor vehicle while having alcohol in a concentration in violation of RCW 46.61.503 in his or her system and being under the age of twenty-one. However, in those instances where the person is incapable due to physical injury, physical incapacity, or other physical limitation, of providing a breath sample or where the person is being treated in a hospital, clinic, doctor's office, emergency medical vehicle, ambulance, or other similar facility in which a breath testing instrument is not present or where the officer has reasonable grounds to believe that the person is under the influence of a drug, a blood test shall be administered by a qualified person as provided in RCW 46.61.506(4). The officer shall inform the person of his or her right to refuse the breath or blood test, and of his or her right to have additional tests administered by any qualified person of his or her choosing as provided in RCW 46.61.506. The officer shall warn the driver that:

    a. His or her privilege to drive will be revoked or denied if he or she refuses to submit to the test;

    b. His or her privilege to drive will be suspended, or denied if the test is administered and the test indicates the alcohol concentration of the person's breath or blood is 0.08 or more, in the case of a person age twenty-one or over, or in violation of RCW 46.61.502, 46.61.503, or 46.61.504 in the case of a person under age twenty-one; and

    c. His or her refusal to take the test may be used in a criminal trial.

2. Except as provided in this section, the test administered shall be of the breath only. If an individual is unconscious or is under arrest for the crime of vehicular homicide as provided in RCW 46.61.520 or vehicular assault as provided in RCW 46.61.522, or if an individual is under arrest for the crime of driving while under the influence of intoxicating liquor or drugs as provided in RCW 46.61.502, which arrest results from an accident in which there has been serious bodily injury to another person, a breath or blood test may be administered without the consent of the individual so arrested.

3. Any person who is dead, unconscious, or who is otherwise in a condition rendering him or her incapable of refusal, shall be deemed not to have withdrawn the consent provided by subsection (1) of this section and the test or tests may be administered, subject to the provisions of RCW 46.61.506, and the person shall be deemed to have received the warnings required under subsection (2) of this section.

4. If, following his or her arrest and receipt of warnings under subsection (2) of this section, the person arrested refuses upon the request of a law enforcement officer to submit to a test or tests

of his or her breath or blood, no test shall be given except as authorized under subsection (3) or (4) of this section.

5. If, after arrest and after the other applicable conditions and requirements of this section have been satisfied, a test or tests of the person's blood or breath is administered and the test results indicate that the alcohol concentration of the person's breath or blood is 0.08 or more if the person is age twenty-one or over, or is in violation of RCW 46.61.502, 46.61.503, or 46.61.504 if the person is under the age of twenty-one, or the person refuses to submit to a test, the person's privilege to operate a motor vehicle within the jurisdiction of the Tulalip Tribes shall be suspended or denied. The arresting officer shall notify the person of the intention to suspend the person's driving privileges and shall transmit to the Tribal Court within seventy-two hours, except as delayed as the result of a blood test, a declaration or sworn report that states:

   i. That the officer had reasonable grounds to believe the arrested person had been driving or was in actual physical control of a motor vehicle within the jurisdiction of the Tulalip Tribes while under the influence of intoxicating liquor or drugs, or both, or was under the age of twenty-one years and had been driving or was in actual physical control of a motor vehicle while having an alcohol concentration in violation of RCW 46.61.503;

   ii. That after receipt of the warnings required by subsection (2) of this section the person refused to submit to a test of his or her blood or breath, or a test was administered and the results indicated that the alcohol concentration of the person's breath or blood was 0.08 or more if the person is age twenty-one or over, or was in violation of RCW 46.61.502, 46.61.503, or 46.61.504 if the person is under the age of twenty-one.

6. The Tulalip Tribal Court, upon the receipt of a report of the law enforcement officer under subsection (6) above, shall suspend or deny such person's privilege to drive within the exterior boundaries of the Tulalip Reservation for a period of six months after the date of the alleged violation, subject to review as hereinafter provided.

7. Upon suspending or denying the privilege to drive of any person, as hereinbefore directed in this section, the Tulalip Tribal Court shall immediately notify the person involved in writing by personal service or by registered or certified mail of its decision and the grounds therefor, and of his right to a hearing, specifying the steps he must take to obtain a hearing.

   The person upon receiving such notice may, in writing and within ten days therefrom, request a formal hearing. The Tulalip Tribal Court shall schedule a hearing for a date within thirty days of receipt of the request and shall give ten days' notice of the hearing to the person requesting the hearing. The scope of the hearing shall cover the issues of whether a law enforcement officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or any drug or had been driving or was in actual physical control of a motor vehicle within the jurisdiction of the Tulalip Tribes while having alcohol in his or her system in a concentration in violation of RCW 46.61.503 and was under the age of twenty-one, whether the person

   was placed under arrest, and

   a. whether the person refused to submit to the test or tests upon request of the officer after having been informed that such refusal would result in the revocation of the person's license, permit, or privilege to drive, or

   b. if a test or tests were administered, whether the applicable requirements of this section were satisfied before the administration of the test or tests, whether the person submitted to the test or tests, or whether a test was administered without express consent as permitted under this section, and whether the test or tests indicated that the alcohol concentration of the person's breath or blood was 0.08 or more if the person was age twenty-one or over at the time of the arrest, or was in violation of RCW 46.61.502, 46.61.503, or 46.61.504 if the person was under the age of twenty-one at the time of the

arrest. The sworn report or declaration submitted by a law enforcement officer is prima facie evidence that the officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle within the jurisdiction of the Tulalip Tribes while under the influence of intoxicating liquor or drugs, or both, or the person had been driving or was in actual physical control of a motor vehicle within the jurisdiction of the Tulalip Tribes while having alcohol in his or her system in a concentration in violation of RCW 46.61.503 and was under the age of twenty-one and that the officer complied with the requirements of this section.

The Tulalip Tribal Court shall order that the suspension or denial either be rescinded or sustained. Any decision by the Tribal Court suspending or denying a person's driving privilege shall be stayed and shall not take effect while a formal hearing is pending or during the pendency of a subsequent appeal to the Tulalip Tribal Appellate Court.

8. A suspension imposed under this section, other than as a result of a breath or blood test refusal, shall be stayed if the person is accepted for deferred prosecution as provided in Section 2.8.10 for the incident upon which the suspension is based. If the deferred prosecution is terminated, the stay shall be lifted and the suspension reinstated. If the deferred prosecution is completed, the stay shall be lifted and the suspension canceled.

9. If the suspension or denial is sustained by the Tribal Court in the formal hearing, the person whose privilege to drive is so affected shall have the right to file a notice of appeal with the Tulalip Tribal Court. The Subchapter on Appellate Proceedings set forth in Section 1.11 of Ordinance 49 shall govern any appeal that may be filed under this Subchapter.

3.13.11 Occupational Driver's Permit--Petition--Eligibility--Restrictions-Cancellation.

1. Any person whose privilege to drive within the exterior boundaries of the Tulalip Reservation is suspended or denied under this Subchapter may petition the Tribal Court for an occupational driver's permit. The Court upon determining that the petitioner is engaged in an occupation or trade which makes it essential that the petitioner operate a motor vehicle may, in its discretion, issue a permit to drive to the petitioner and may set definite restrictions such as hours of the day, which may not exceed twelve hours in any one day, days of the week, type of occupation, areas or routes of travel permitted, or no driving if the person has been drinking.

2. The Tribal Court may cancel an occupational driver's permit upon receipt of notice that the holder has operated a motor vehicle in violation of its restrictions or upon notice of the commission of an alcohol related driving offense.

3.13.12 Notice to Tribal Police Department. The Tribal Court shall notify the Tribal Police Department in writing of any suspension or denial of driving privileges within the boundaries of the Tulalip Reservation and of any occupational permits issued by the Court and restrictions placed upon such occupational permit.

3.13.13 Infraction - What Constitutes.

1. Failure to perform any act required or the performance of any act prohibited by the laws incorporated by section 3.13.1 is designated a traffic infraction and may not be classified as a criminal offense except for the following provisions of the Revised Code of Washington incorporated by reference in section 3.13.1:

   a. RCW 46.09.120(2) relating to the operation of a non-highway vehicle while under the influence;

b. RCW 46.09.130 relating to operation of non-highway vehicles;

c. RCW 46.52.010 relating to hitting or striking an unattended car or other property;

d. RCW 46.52.020 relating to duty in case of injury to or death of a person or damage to an attended vehicle;

e. RCW 46.61.015 relating to obedience to police officers, flagmen, or fire fighters;

f. RCW 46.62.020 relating to refusal to give information to or cooperate with an officer;

g. RCW 46.61.022 relating to failure to stop and give identification to an officer;

h. RCW 46.61.024 relating to attempting to elude pursuing police vehicles;

i. RCW 46.61.500 relating to reckless driving;

j. RCW 45.61.502 and 46.61.504 relating to persons under the influence of intoxicating liquor or drugs;

k. RCW 46.61.503 relating to a person under age twenty-one driving a motor vehicle after consuming alcohol;

l. RCW 46.61.520 relating to vehicular homicide by motor vehicle;

m. RCW 46.61.522 relating to vehicular assault;

n. RCW 46.61.527(4) relating to reckless endangerment of roadway workers;

o. RCW 46.61.530 relating to racing of vehicles on highways;

p. RCW 46.61.685 relating to leaving children in an unattended vehicle with the motor running.

3.13.14 Criminal Penalties. The penalties imposed by the Tribal Court for criminal traffic violations shall be those set forth in the above referenced sections of the Revised Code of Washington, except that no Tribal Court penalty may exceed one year jail time or a fine of $5,000, or both.

In addition to any other penalties imposed on a person convicted of a traffic offense, the Court may prohibit or set restrictions on the operation of a vehicle by such person on any road within the jurisdiction of the Tulalip Tribes for a period not to exceed one year, or may utilize the provisions for the suspension or revocation of driver's licenses under the laws of the jurisdiction issuing such license.

3.13.15 Traffic Infraction Procedure. Unless otherwise provided by this Title, prosecution of traffic infractions listed under this Title shall be in accordance with the procedures for traffic infraction violations provided for in Part 2.12 of this Ordinance. The provisions of Ordinance 114 shall not be applicable to traffic infractions.

3.13.16 Monetary Deterrent Schedule for Infractions. The penalty for any traffic infraction not listed below shall be $57, except for infractions in which a specific penalty or fine amount is provided in other sections of this code. The Court may impose on a defendant a lesser penalty in an individual case.

1. **Equipment RCW 46.37**

   a. Illegal Use of Emergency Equipment, RCW 46.37.190, $62.00;

   b. Defective or modified exhaust system, mufflers, prevention of noise and smoke, RCW 46.37.390(1) and (3).

      First offense, $57.00;

Second offense within one year, $82.00;

Third and subsequent within one year, $102.00;

c. All other RCW 46.37 Equipment Infractions, $57.00;

2. **Rules of the Road (46.61)**

a. Failure to stop, RCW 46.61.050 and 210, $57.00;

b. Failure to yield right of way, RCW 46.61.180, 185, 190, 205, 210, 235,300,365, $57.00;

c. Following too close, RCW 46.61.145 and 635, $57.00;

d. Failure to signal, RCW 46.61.310, $57.00;

e. Improper lane usage or travel, RCW 46.61.140, $57.00;

f. Impeding traffic, RCW 46.61.435, $57.00;

g. Improper passing, RCW 46.61.110, 115, 120, 125, 130, $57.00;

h. Prohibited and improper turn, RCW 46.61.290, 295, 305, $57.00;

i. Crossing double yellow line left of center, RCW 46.61.100,.130,.140, $57.00;

j. Operating with obstructed vision, RCW 46.61.615, $57.00;

k. Wrong way on one-way street, $57.00;

l. Failure to comply with restrictive signs, RCW 46.61.050, $82.00;

3. **Speeding, RCW 46.61.400**

a. <u>If speed limit is over **40 mph**</u>:

1 - 5 mph over limit, $42.00;

6 - 10 mph over limit, $52.00;

11 - 15 mph over limit, $67.00;

16 - 20 mph over limit, $82.00;

21 - 25 mph over limit, $97.00;

26 - 30 mph over limit, $117.00;

31 - 35 mph over limit, $142.00;

36 - 40 mph over limit, $167.00;

Over 40 mph over limit, $197.00;

b. <u>If speed limit is 40 mph or less</u>:

1 - 5 mph over limit, $52.00;

6 - 10 mph over limit, $57.00;

11 - 15 mph over limit, $72.00;

16 - 20 mph over limit, $92.00;

21 - 25 mph over limit, $117.00;

26 - 30 mph over limit, $142.00;

31 - 35 mph over limit, $167.00;

Over 35 mph over limit, $197.00;

Speed too fast for conditions, RCW 46.61.400(1), $57.00;

4. **Serious Infractions**

a. Wrong Way on Freeway, RCW 46.61.150, $185.00;

b. Wrong Way on Freeway Access, RCW 46.61.155, $90.00;

c. Backing on limited access highway, RCW 46.61.605, $90.00;

d. Spilling for failure to secure load, RCW 46.61.655, $90.00;

e. Throwing or depositing debris on highway, RCW 46.61.645, $90.00;

f. Disobeying school patrol, RCW 46.61.385, $90.00;

g. Passing stopped school bus with red lights flashing, RCW 46.61.370, $150.00;

h. Violation of posted road restriction, RCW 46.44.080 and 105(4), $90.00;

i. Driving while suspended or revoked, 3.13.6, $250.00;

j. Negligent driving, 3.13.7, $145.00;

k. Failure to possess liability insurance, 3.13.9, $145.00;

5. **Parking**

a. Illegal parking on roadway, RCW 46.61.560, $30.00;

b. Parking in any prohibited place RCW 46.61.570 $15.00;

c. Any other parking infraction, $15.00.

6. **Pedestrians**

Any infraction regarding pedestrians, $15.00.

7. **Bicycles**

Any infraction regarding bicycles, $25.00.

8. All other unlisted infractions, $57.00;

9. If an accident occurs with any of the above listed infractions or speed too fast for conditions, the penalty for the infraction shall be a minimum of $102.00.

3.13.17 Tribal Driver Improvement Program. Nothing in this Part shall prohibit the Tribes from developing and instituting their own driver improvement program to allow for reinstatement of driving privileges for Tribal members.

13.13.18 Vehicle Impoundment. Tulalip law enforcement officers shall have the authority to impound any vehicle on the Reservation that causes a public safety hazard or if the operator of the vehicle is in violation of a criminal offense. In cases of impoundment, the registered owner of the vehicle shall be responsible for all costs relating to impoundment, and the procedures governing traffic infraction appeals shall govern appeals challenging payment of vehicle impoundment costs.

Part 14 - Offenses Involving Dangerous Drugs

3.14.1 DRUG ABUSE. Any person, under the jurisdiction of this Law and Order Code, who violates any of the following subsections shall be guilty of committing the offense of Drug Abuse and upon conviction shall be sentenced according to the penalties herein described.

3.14.2 Definitions. As used in this section:

a. "**Administer**" means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body.

b. "**Controlled substance**" means a drug, substance, or immediate precursor in Schedules I and II.

c. "**Delivery**" or "**delivery**" means the actual, constructive, or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship.

d. "**Distribute**" means to deliver other than by administering or dispensing a controlled substance.

e. "**Drug**" means (1) substances recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or Official National Formulary, or any supplement of any of them; (2) substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals; (3) substances (other than food) intended to affect the structure of any function of the body of man or animals; (4) substances intended for use as a component of any article specified in clause (1), (2), (3) of this subsection. It does not include devices or their components, parts, or accessories.

ee. **"Legend Drug"** means any drug which is required by Washington state law or regulation of the state board of pharmacy to be dispensed on prescription only or is restricted to use by licensed physicians, dentists, pharmacists, veterinarians or other health care professionals.

f. "**Manufacture**" means the production, preparation, propagation, compounding, conversion or processing of a controlled substance, either directly or indirectly by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation or compounding of a controlled substance by:

1. a practitioner as an incident to his administering or dispensing of a controlled substance in the course of his professional practice, or

2. a practitioner, or by his authorized agent under his supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale.

f. "**Marijuana**" means all parts of the plant of the genus Cannabuis L., whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

g. "**Narcotic drug**" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

1. Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate.

2. Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in clause 1, but not including the isoquinoline alkaloids of opium.

3. Opium poppy and poppy straw.

4. Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

i. "**Production**" includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance.

3.14.3 Schedule I.

a. The controlled substances listed in this section, by whatever official name, common or unusual name, chemical name, or brand name, are included in Schedule I.

b. **Opiates.** Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters and ethers, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

Acethylmethadol;
2. Allylprodine;
3. Alphacethylmethadol;
4. Alphameprodine;
5. Alphamethadol;
6. Benzathidine;
7. Betacethylemethadol’
8. Betameprodine;
9. Betamethadol;
10. Betaprodine;
11. Clonitazene;
12. Dextromoramide;
13. Diampromide;
14. Diethylthiabutene;
15. Difenoxin;
16. Dimenoxadol;
17. Dimepheptanol;
18. Dimethylthiambutene;
19. Dioxaphetyl butyrate;
20. Dipipanone;
21. Ethylmethylthiambutene;
22. Etonitazene;
23. Etoxeridine;
24. Furethidine;
25. Hydroxypethidine;
26. Ketobemidone;
27. Levomoramide;
28. Levophynacylmorphan;
29. Morpheridine;
30. Noracymethadol;
31. Norlevorphanol;
32. Normethadone;
33. Norpipanone;
34. Phenadoxone;
35. Phenampromide;
36. Phenomorphan;
37. Phenoperidine;
38. Piritramide;
39. Propheptazine;
40. Properidine;
41. Propiram;
42. Racemoramide;
43. Trimeperidine.

b. **Opium derivative.** Unless specifically excepted or unless listedin another schedule, any of the following opium derivatives, their salts, isomers, and salts of isomers, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

1. Acetorphine;
2. Acetyldihydrocodeine
3. Benzylmorphine;
4. Codeine methylbromide;
5. Codeine-N-Oxide;
6. Cypernorphine;
7. Desomorphine;
8. Dihydromorphine;
9. Drotebanol;
10. Etorphine (except hydrochloride salt);
11. Heroin
12. Hydromorphinol;
13. Methyldesorphine;
14. Methyldihydromorphine;
15. Morphine methylbromide;
16. Morphine methylsulfonate;
17. Morphine-N-Oxide;
18. Myrophine;
19. Nicocodeine;
20. Nicormorphine;
21. Normorphine;
22. Phoclodine;
23. Thebacon.

c. **Hallucinogenic substances.** Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, or which contains any of these salts, isomers, and salts of isomers, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation. (For purposes of paragraph (d) of this section, only the term "isomer" includes the optical, position, and geometric isomers.):

1. 3,4-methylenedioxy amphetamine;
2. 5-methoxy-3,4-methylenedioxy amphetamine;
3. 3,4,5-trimethoxy amphetamine;
4. 4-bromo-2,5-dimethoxyamphetamine;
5. 2,5-dimethoxyamphetamine;
6. 4-methoxyamphetamine;
7. 4-methyl-2,5-dimethoxyamphetamine;
8. Bufotenine;
9. Diethyltryptamine;
10. Dimethyltryptamine;
11. Ibogaine;
12. Lysergic acid diethylamide;
13. Marijuana;
14. Mescaline;
15. Peyote, meaning all parts of the plant presently classified botanically as Lophophora Williamsii Lemaire whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, derivative, mixture or preparation of such plant, its seeds, or extracts;
16. N-ethyl-3-piperidyl benzilate;
17. N-methyl-3-piperidyl benzilate;
18. Psilocybin;
19. Psilocyn;
20. Tetrahydrocannabinols, synthetic equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, specifically, and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:
    i. Delta 1-cis-or trans tetrahydrocannabinol, and their optical isomers;
    ii. Delta 6-cis-or trans tetrahydrocannabinol, and their optical isomers;
    iii. Delta 3.4-cis-or trans tetrahydrocannabinol, and its optical isomers;

    (Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered, are all included.)
21. Ethylamine analog of phencyclidine;
22. Pyrrolidine analog of phencyclidine;
23. Thiopene analog of phencyclidine.

d. **Depressant.** Unless specifically excepted or unless listed in another schedule, any material compound, mixture, or preparation which contains any quantity of mecloqualone having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

3.14.4 Schedule II.

a. The drugs and other substances listed in this section, by whatever official name, common or usual name, chemical name, or brand name designated, are included in Schedule II.

b. **Substances.** (Vegetable origin or chemical synthesis). Unless specifically excepted, any of the

following substances, except those listed in other schedules whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

1. Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, excluding apomorphine, dextrorphan, nalbuphine, naloxone, and naltrexone, and their respective salts, but including the following:

i. Raw opium;
ii. Opium extracts;
iii. Opium fluid extracts;
iv. Powdered opium;
v. Granulated opium;
vi. Tincture of opium;
vii. Codeine;
viii. Ethylmorphine;
ix. Etorphine hydrochloride;
x. Hydrocodone;
xi. Hydromorphone;
xii. Metopon;
xiii. Morpine;
xiv. Oxycodone;
xv. Oxymorphone; and
xvi. Thebaine.

2. Any salt, compound, isomer, derivative or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (b) (1) of this section, but not including the isoquinoline alkaloids of opium.

3. Opium poppy and poppy straw.

4. Coca leaves and salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocanized coca leaves or extractions which do not contain cocaine or ecgonine.

5. Concentrate of poppy straw. (The crude extract of poppy straw in either liquid, solid, or powder form which contains the phenanthrene alkaloids of the opium poppy.)

c. **Opiates.** Unless specifically excepted or unless in another schedule, any of the following opiates, including their isomers, esters, ethers, salts and salts of isomers, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation, dextrorphan excepted:

1. Alphaprodine;
2. Anileridine;
3. Bezitramide;
4. Dihydrocodeine;
5. Diphenozylate;
6. Fentanyl;
7. Isomethadone;
8. Levomethorphan;
9. Levorphanol;
10. Metazocine;
11. Methadone;
12. Methadone-Intermediate, 4-cyano-2-dimethylamino-4,4-diphenylbutane;
13. Moramide-intermediate, 2-methyl-3-moropholino-1, 1-diphenylpropane-caroxylic acid;
14. Pethidine (meperidene);
15. Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;
16. Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;

17. Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;
18. Phenazocine;
19. Piminodine;
20. Racemethorphan;
21. Racemorphan.

d. **Stimulants.** Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system:

1. Amphetamine, its sales, optical isomers, and salts of its optical isomers;
2. Methamphetamine, its salts, isomers, and salts of its isomers;
3. Phenmetrazine and its salts;
4. Methylphenidate.

e. **Depressants.** Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

1. Amobarbital;
2. Methaqualone;
3. Pentobarbital;
4. Phencyclidine;
5. Phencyclidine immediate precursors;
   i. 1-phenylcyclophexylamine;
   ii. 1-piperidinocyclohexanecarbonitrile (PPC);
6. Secobarbital.

3.14.5 Drug Paraphernalia: Definitions.

1. Drug paraphernalia means all equipment, products, and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance. It includes, but is not limited to:
2. Kits used, intended for use, or designed for use in planting, propagating, cultivating, growing, or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived;
3. Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances;
4. Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substances;
5. Testing equipment used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance;
6. Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances;

7. Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose, and lactose, used, intended for use, or designed for use in cutting controlled substances;

8. Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana;

9. Blenders, bowls, containers, spoons, and mixing devices used, intended for use, or designed for use in compounding controlled substances;

10. Capsules, balloons, envelopes, and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances;

11. Containers and other objects used, intended for use, or designed for use in storing and concealing controlled substances;

12. Hypodermic syringes, needles, and other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human body;

13. Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish oil into the human body, such as:

i. Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;

ii. Water pipes;

iii. Carburetion tubes and devices;

iv. Smoking and carburetion masks;

v. Roach clips: meaning objects used to hold burning material, such as marijuana cigarette, that has become too small or too short to be held in the hand;

vi. Miniature cocaine spoons, and cocaine vials;

vii. Chamber pipes;

viii. Carburetor pipes;

ix. Electric pipes;

x. Air-driven pipes;

xi. Chillums;

xii. Bongs; and

xiii. Ice pipes, or chillers.

b. In determining whether an object is drug paraphernalia under this section, a court or other authority should consider, in addition to all other logically relevant facts, the following:

1. Statements by an owner or by anyone in control of the object concerning its use;

2. Prior convictions, if any, of an owner, or of anyone in control of the object, under any state, federal or tribal law relating to any controlled substance;

3. The proximity of the object, in time and space, to a direct violation of this chapter;

4. The proximity of the object to controlled substances;

5. The existence of any residue of controlled substances on the object;

6. Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons whom he knows, or should reasonably know, intend to use the object to facilitate a violation of this chapter; the innocence of an owner, or of anyone in control of the object, as to a direct violation of this chapter shall not prevent a finding that the object is intended or designed for use as drug paraphernalia;

7. Instructions, oral or written, provided with the object concerning its use;

8. Descriptive materials accompanying the object which explain or depict its use;

9. National and local advertising concerning its use;

10. The manner in which the object is displayed for sale;

11. Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;
12. Direct or circumstantial evidence of the ratio of sales of the object(s) to the total sales of the business enterprise;
13. The existence and scope of legitimate uses for the object in the community; and
14. Expert testimony concerning its use.

3.14.6 Prohibited Acts (Manufacture, Cultivate, Deliver): Penalties. Except as authorized by this section, it is unlawful for any Indian person to manufacture, cultivate, deliver, or possess with intent to manufacture or deliver, a controlled substance. Any person who violates this subsection is guilty of a Class E offense.

3.14.7 Prohibited Acts (Possession): Penalties. Except as authorized by this section, it is unlawful for any person to possess a controlled substance. Any person who violates this subsection with respect to any controlled substance other than marijuana is guilty of a Class E offense. Any person who violates this section with respect to possession of more than 40 grams of marijuana is guilty of a Class E offense. A first offense of possession of less than 40 grams of marijuana is a Class C offense. A second and subsequent offense of possession of less than forty grams of marijuana is a Class D offense.

3.14.8 Prohibited Acts (Drug Paraphernalia): Penalties. Except as authorized by this section, it is unlawful for any person to possess any drug paraphernalia. A first offense of possession of drug paraphernalia is a Class B offense. A second and subsequent offense of possession of drug paraphernalia is a Class C offense.

3.14.9 Defenses. Any Indian person lawfully involved in the possession, distribution, manufacture or delivery of any controlled substance listed in Schedule I and II shall not be in violation of this section.

3.14.10 Possession of an Alcoholic Beverage by a Person Under 21. Any Indian person who, being under the age of 21 years old, shall possess, purchase, consume, obtain, or sell any beer, wine, ale, whiskey or other alcoholic beverage or misrepresent his age for the purpose of buying or otherwise obtaining an alcoholic beverage shall be guilty of Possession of an Alcoholic Beverage by a Person Under 21. Possession of an Alcoholic Beverage by an Indian Person Under 21 is a Class C offense.

3.14.11 Use or Possession of Alcoholic Beverages Prohibited-Community Center. The use or possession of alcoholic beverages on the premises of the Tulalip Tribal community center at 6700 Totem Beach Road is prohibited. Any Indian person who shall use or possess alcoholic beverages on the premises of the Tribal Community Center shall be guilty of Use or Possession of Alcoholic Beverages and/or drugs at Community Center. Violation of this section is a Class C offense.

3.14.12. Violations by Persons Not Subject to Tribal Criminal Jurisdiction. Any person found responsible for a violation of this Substance Abuse prohibition, who is not subject to the criminal jurisdiction of the Tulalip Tribes, shall be subject to other provisions of the Tulalip Tribal laws including but not limited to exclusion or expulsion from the lands of the Tulalip Indian Reservation.

3.14.13 It shall be unlawful for any person to sell, deliver, or possess any legend drug except upon the

order or prescription of a licensed physician, dentist, veterinarian or other health care professional legally authorized to prescribe such legend drug; PROVIDED, that the above provision shall not apply to the sale, delivery or possession by drug wholesalers or drug manufacturers or their agents or employees, or to any practitioner acting within the scope of his or her license, or to a common or contract carrier or warehouseman, or any employee thereof, whose possession of any legend drug is in the usual course of business or employment; and PROVIDED FURTHER that nothing in this section shall prohibit a family planning clinic from selling, delivering, possessing, and dispensing oral contraceptives prescribed by authorized, licensed health care practitioners. Any person who violates this subsection is guilty of a Class E offense.

3.14.14 Public Consumption of Alcoholic Beverages / Open Container

1. No person shall open a package containing an alcoholic beverage or consume an alcoholic beverage in a public place, unless consumption of alcoholic beverages in such public place is specifically permitted or licensed by the Tribes.
2. Unlawful open container or consumption of alcoholic beverages in a public place is a Class A offense, punishable by a fine not to exceed $100.00.

TITLE IV

Civil Rules of Tribal Court

4.1. SCOPE OF RULES. See Rule 4.2. Commencement of Action; Service of Process, Pleadings, Motions, And Orders

4.2 ONE FORM OF ACTION. There shall be one form of action to be known as "civil action."

4.3 COMMENCEMENT OF ACTION. A civil action is commenced by filing with the court a complaint signed as required by Rule 4.10.

4.4. PROCESS.

4.4.1 Summons: Issuance: Any person desiring to commence a civil action shall do so by filing a written complaint with the court, and when such complaint is so filed, upon payment of a fee, a summons shall issue.

4.4.2. Summons. The summons for personal service shall contain;

4.4.2.1 The title of the cause, specifying the name of the court in which the action is brought, and the names of the parties to the action, plaintiff and defendant.

4.4.2.2 A direction to the defendant summoning him to serve a copy of his defense within a time stated in the summons.

4.4.2.3 A notice that, in case of failure so to do, judgment will be rendered against him by default.

4.4.3 Summons: Form: The summons shall be signed by the plaintiff or his attorney or attorneys and be substantially in the following form:

Tulalip Tribal Court

		)	
	Plaintiff,	)	No.
v.		)	Summons
		)	
	Defendant.	)	

TO THE DEFENDANT: A lawsuit has been started against you in the above entitled court by _____, plaintiff. Plaintiff's claim is stated in the written complaint, a copy of which is served upon you with this summons.

In order to defend against this lawsuit, you must respond to the complaint by stating your defense in writing, and by serving a copy upon the person signing this summons within 20 days after the service of

this summons, excluding the date of service, or a default judgment may be entered against you without notice. A default judgment is one where plaintiff is entitled to what he asks for because you have not responded. If you serve a notice of appearance on the undersigned person, you are entitled to notice before a default judgment may be entered.

You may demand that the plaintiff file this lawsuit with the court. If you do so, the demand must be in writing and must be served upon the person signing this summons. Within 14 days after you serve the demand, the plaintiff must file this lawsuit with the court, or the service on you of this summons and complaint will be void.

If you wish to seek the advice of an attorney in this matter, you should do so promptly so that your written response, if any, may be served on time.

This summons is issued pursuant to Title IV of the Civil Rules of the Tulalip Tribal Court.

[signed] _____

_____

Print or type Name

( ) Plaintiff ( ) Plaintiff's Attorney

P. O. Address _____

_____

Dated _____ Telephone Number _____

4.4.4 Summons: By Whom Served. Service of summons and complaint may be made by any citizen of the State of Washington over the age of eighteen (18) years and who is competent to be a witness and is not a party to the action.

4.4.5 Summons: Personal Service. The summons shall be attached to the complaint and a copy of the summons and complaint shall be served together upon the defendant. If service is outside the Tribe's territorial jurisdiction the special summons requirements of this section shall apply. The plaintiff shall furnish the person making service with such copies as are necessary.

Personal service shall be made as follows:

4.4.5.1 If the action be against any county in this state, to the county auditor.

4.4.5.2 If against any town or incorporation city in the state, to the mayor, manager, or clerk thereof.

4.4.5.3 If against a school district, to the clerk thereof.

4.4.5.4 If against a railroad corporation, to any station, freight, ticket or other agent thereof.

4.4.5.5 If against a corporation owning or operating sleeping cars, or hotel cars, to any person having charge of any of its cars or any agent found.

4.4.5.6 If against a domestic insurance company, to any agent authorize by such company to solicit

insurance.

4.4.5.7 If against a foreign or alien insurance company, as provided in RCW 48.05.200 and 48.05.210; which are adopted herein by this reference as though set forth in full.

4.4.5.8 If against a company or corporation doing any express business, to any agent authorized by said company or corporation to receive and deliver express matters and collect pay therefore.

4.4.5.9 If the suit be against a company or corporation other than those designated in the preceding subdivisions of this section to the president or other head of the company or corporation, secretary, cashier managing agent of the company or corporation or branch or local office or to the secretary, stenographer or office assistant of such individuals.

4.4.5.10 If the suit be against a foreign corporation or non-resident joint stock company, partnership, or association doing business within this state, to any agent, cashier or secretary thereof.

4.4.5.11 If against minor under the age of fourteen (14) years, to such minor personally, and also to his father, mother, guardian, or if there by none within the jurisdiction, then to any person having the care or control of such minor, or with whom he resides, or in whose service he is employed, if such there be.

4.4.5.12 In all other cases, to the defendant personally, or by leaving the summons and complaint at the house of his usual abode with some person of suitable age and discretion then resident therein.

4.4.5.13 Whenever any domestic or foreign corporation, which has been doing business on the Reservation, has been placed in the hands of a receiver and the receiver is in possession of any of the property or assets of such corporation, service of all process upon such corporation may be made upon the receiver thereof. When tribal law authorizes personal service outside the territorial jurisdiction of the tribal court, the service, when reasonably calculated to give actual notice, may be made.

4.4.5.14 By personal delivery in the manner prescribed by the law of the place in which the service is made for service in an action in any of its courts of general jurisdiction.

4.4.5.15 [Reserved]

4.4.5.16 When outside the State of Washington, by any form of mail addressed to the person to be served and requiring a signed receipt;

4.4.5.17 As directed by the foreign authority in response to a letter rogatory; or

4.4.5.18 The summons served upon a party outside the tribal court's territorial jurisdiction shall be in substantially the same form as that required for personal service and shall require the defendant to respond within (30) days from the date of service, if service is made within the State Washington, and sixty (60) days after personal service if made outside the State of Washington. Service made in the mode

provided in this Rule 4.4.5 shall be taken and held to be personal service.

4.4.6 SUMMONS: SERVICE BY PUBLICATION.

4.4.6.1 When the defendant cannot be found within the territorial jurisdiction of the court, and upon the filing of a declaration of the plaintiff, plaintiff's agent, or attorney, with the court stating that he believes that the defendant is not a resident of the county of the Reservation, or cannot be found therein, and that he has deposited a copy of the summons (substantially in the form prescribed in this rule) and complaint in the post office, directed to the defendant at his place of residence, unless it is stated in the affidavit that such residence is not known to the affiant, and stating the existence of one of the cases hereinafter specified, the service may be made by publication of the summons by the plaintiff or his attorney in any of the following cases.

4.4.6.1.1 When the defendant is a foreign corporation, and has property within the Reservation.

4.4.6.1.2 When the defendant, being a resident of the Reservation, has departed therefrom with the intent to defraud his creditors, or to avoid the service of a summons and complaint, or keeps himself concealed therein with like intent.

4.4.6.1.3 When the defendant is not resident of the Reservation, but has property therein and the court has jurisdiction of the subject of the action.

4.4.6.1.4 When the subject of the action is real or personal property in the Reservation, and the defendant has or claims a lien or interest, actual or contingent, therein, and the relief demanded consists wholly, or partially, in excluding the defendant from any interest or lien therein.

4.4.6.1.5 When the action is for dissolution of marriage in the cases prescribed by law.

4.4.6.1.6 When the action is to foreclose, satisfy, or redeem from a mortgage or deed of trust, or to enforce a lien of any kind on real estate in the Reservation, or satisfy or redeem from the same.

4.4.6.1.7 When the action is against any corporation, whether private or municipal, organized under the laws of the state of Washington or Tulalip Tribes, and the proper officers on whom to make service do not exist or cannot be found.

4.4.6.1.8 When the action is brought by one having in his possession, or under his control, any property or money, or being indebted, where more than one person claims to be the owner of, entitled to, interested in, or to have a lien on, such property, money, or indebtedness, or any part thereof.

4.4.6.2 The publication shall be made in a newspaper of general circulation in Snohomish County, Washington, once a week for six consecutive weeks; PROVIDED, That publication of summons shall not be made until after the filing of the complaint, and the service of the summons shall be deemed complete at the expiration of the time prescribed for publication. The summons must be subscribed by the plaintiff or his attorney or attorneys. The summons shall contain the date of the first publication, and shall require the defendant or defendants upon whom service by publication is desired, to appear and answer the complaint within sixty days from the date of the first publication of the summons; and the summons for

publication shall also contain a brief statement of the object of the action. The summons for publication shall be substantially as follows:

The Tulalip Tribes of Washington

	)	
Plaintiff,	)	No.
v.	)	
	)	
Defendant.	)	

The Tulalip Tribes of Washington to the said (naming the defendant or defendants to be served by publication):

You are hereby summoned to appear within sixty days after the date of the first publication of this summons to wit, within sixty days after the _____ day of _____, 20___, and defend the above entitled action in the above entitled court, and answer the complaint of the plaintiff _____ and serve a copy of your answer upon the undersigned attorneys for plaintiff _____ at his (or their) office below stated; and in case of your failure so to do, judgment will be rendered against you according to the demand of the complaint, which has been filed with the clerk of said court. (Insert here a brief statement of the object of the action).

_____

Plaintiff's Attorneys

P. O. Address: _____

County _____

_____, Washington

4.4.6.3 Service by publication alone shall not alone be taken and held to give the court jurisdiction over the person of the defendant. By such, service, the court only acquires jurisdiction to give a judgment which is effective as to property or debts attached or garnished in connection with the suit or other property which properly forms the basis of jurisdiction of the court. If the defendant appears in a suit commenced by such service, the court shall have jurisdiction over his person. The defendant may appear specially and solely to challenge jurisdiction over property or debts attached or garnished or other property within the jurisdiction of the court.

4.4.7 Effect of Personal Service Outside Territory Subject to Tribal Jurisdiction. Personal service of the complaint and summons or other process may be made upon any party outside the territorial jurisdiction of the Tribe, in the amount prescribed in section 4.4.5, if upon a member of the Tribe, or resident of the reservation, or a person or entity who has submitted to the jurisdiction of the tribal court by any of the acts specified in section 1.2.4 of this Ordinance, it shall have the same force and effect of personal service within the tribal court's territorial jurisdiction; otherwise, it shall have the force and effect of service by publication.

4.4.8 RETURN.

4.4.8.1 The person serving the complaint and summons shall make proof of service thereof to the court promptly and in any event within the term during which person served must respond to the summons.

4.4.8.2 Proof of service outside the territorial jurisdiction of the tribal court may be made by affidavit of the individual who made the service or in the manner prescribed by the law of the place in which the service is made for an action in any of its courts of general jurisdiction. When service is made by mail, proof of service shall include a receipt signed by the addressee or other evidence of personal delivery to the addressee satisfactory to the tribal court.

4.4.8.2.1 By his or her affidavit of service endorsed upon or attached to a copy of the summons.

4.4.8.2.2 If served by publication, the affidavit of the printer, publisher, foreman, principal clerk or business manager of the newspaper showing the same, together with a printed copy of the summons as published; or Proof of Service outside the territorial jurisdiction of the tribal court may be made by affidavit of the individual who made the service or in the manner prescribed by the law of the place in which the service is made for an action in any of its courts of general jurisdiction. When service is made by mail, proof of service shall include a receipt signed by the addressee or other evidence of personal delivery to the addressee satisfactory to the tribal court.

4.4.8.2.3 Written admission of the defendant endorsed upon a copy of the summons. In case of service otherwise than by publication, the return, affidavit, or admission must state the time place, and manner of service.

Proof of service outside the territorial jurisdiction of the tribal court may be made by affidavit of the individual who made the service or in the manner prescribed by the law of the place in which the service is made for an action in any of its courts of general jurisdiction. When service is made by mail, proof of service shall include a receipt signed by the addressee or other evidence of personal delivery to the addressee satisfactory to the tribal court.

4.4.8.3 Costs shall not be awarded and a default judgment shall not be rendered unless proof of service is on file with the court.

4.4.9 AMENDMENT. At any time in its discretion and upon such terms as it deems just, the court may allow any process or proof of service thereof to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process issued.

4.5 SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS

4.5.1 Service: When Required: Every order required by its terms to be served, every written pleading subsequent to the original complaint, every written motion, and every written notice, appearance, demand, offer or judgment, or other paper shall be served upon all parties, but no service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons and complaint in Rule 4.4.

4.5.2 Same: How Made: Whenever under these rules service of papers other than the complaint and summons is required or permitted, the rules governing the manner of service of such papers in the Superior Court of the State of Washington in and for Snohomish County shall govern.

4.5.3 Filing: All papers after the complaint required to be served upon a party shall be filed with the court either before service or with in a reasonable time thereafter and a reference shall be made to them in the record of the court.

4.5.4 Filing With the Court Defined: The filing of pleading and other papers with the court as required by these rules shall be made by filing them with the judge or with his authorized clerk and the filing date shall be noted thereof at the time of filing.

4.6 TIME

4.6.1 Computation: The time within which an act is to be done, as herein provided, shall be computed by excluding the first day, and including the last, unless the last day is a holiday or Sunday, and then it is also excluded.

4.6.2 For Motions - Affidavits: A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served not later than seven (7) days, and any written response thereto shall be served not later than three (3) days before the time specified for the hearing, unless a different period is fixed by these rules or by order of the court. Such an order may, for cause shown, be made on ex parte application. When a motion is supported by affidavit, the affidavit in any of these rules, opposing affidavits may be served not later than one (1) day before the hearing, unless the court permits them to be served at some other time.

4.7 PLEADING ALLOWED: FORM OF MOTIONS

4.7.1 Pleadings: There shall be a complaint and an answer, and there shall be a reply to a counterclaim denominated as such; and answer to a cross-claim, if the answer contains a crossclaims; a third party complaint, if leave is given under Rule 4.14 to summon person who was not an original party; and there shall be a third party answer, if a third party complaint is served. No other pleading shall be allowed.

The complaints, answers, counterclaims, replies, cross-claims, and third party claims shall be in writing.

4.7.2 MOTIONS AND OTHER PAPERS:

4.7.2.1 An application to the court for an order shall be by motion. Motion need not be in any special form but must be such as to enable a person of common understanding to know what is intended.

4.7.2.2 The rules applicable to captions, signing, and other matters of form of written pleadings apply to all written motions and other papers provided for by there rules.

4.7.3 Demurrers, Pleas, etc., Abolished: Demurrers, pleas, and exceptions for insufficiency of a pleading shall not be used.

4.8 GENERAL RULES OF PLEADING

4.8.1 Claims for Relief: A complaint, counterclaim, cross-claim, or third party claim shall contain: (1) a short and plain statement of the claim showing that the pleader is entitled to relief; and (2) a demand for judgment for the relief of which he deems himself entitled. Relief in the alternative or of several different types may be demanded.

4.8.2 Defenses; Form of Denials: A party shall state his defenses, denials, and objections to each claim asserted against him in any form which will enable of person of common understanding to know what is intended. If he is without knowledge or information sufficient to form a belief as to the truth of an averment, he shall so state and this has the effect of a denial.

4.8.3 Affirmative Defenses: In a written answer to a complaint, cross-claim, and in a written reply to a counterclaim, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption or risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constitution an avoidance or affirmative defense. When a party had mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation.

4.8.4 Effect of Failure to Deny: Statement in a pleading to which a responsive pleading is required, other then those as to the amount of damage, are admitted when not denied by responsive pleading. Statements of an answer to a complaint, cross-claim, or. third party complaint, or a reply to a counterclaim shall be taken as denied or avoided.

4.8.5 PLEADING TO BE CONCISE AND DIRECT; CONSISTENCY:

4.8.5.1 No technical forms of pleadings or motions are required. Pleadings and motions shall be stated so as to enable a person of common understanding to know what is intended.

4.8.5.2 A party may set forth two more statement of a claim of defense alternately or hypothetically, either in one count or defense or in separate counts or defense or in separate counts or defense. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one more of the alternative statements. A party may also state as may separate claims or defenses as he has regardless of consistency and whether based on legal or on equitable ground or on both. All statements shall be made subject to the obligations set forth in Rule 4.10.

4.8.6 Construction of Pleadings: All pleadings shall be so construed as to do substantial justice.

4.9 FORM OF PLEADINGS

4.9.1 Caption; Names of Parties: Every written pleading shall contain a caption setting forth the name of the court, the title of the action, the file number if known to the. person signing it, and a designation as in Rule 4.7.1. In the complaint, the title of the action shall include the names of all the parties, but in other written pleadings it is sufficient to state the name of the first party on side with an appropriate indication of other parties. When the plaintiff is ignorant of the name of the defendant, it shall be so stated in his pleading, and such defendant may be designated in any pleading or proceeding by any name, and when his true name shall be discovered, the pleading or proceeding may be amended accordingly.

4.9.2 Adoption by Reference Exhibits: Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion. A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes.

4.9.3 Forms: All notice, pleading, motions, and other papers filed shall be plainly written or typed.

4.10 SIGNING OF PLEADINGS, MOTIONS AND LEGAL MEMORANDA

4.10.1 All pleadings, motions, and legal memoranda of a party represented by an attorney shall be dated and signed by at least one attorney of record in his individual name, whose address shall be stated. A party who is not represented by an attorney shall date and sign his pleadings, motions, and legal memoranda and state his address. The signature of a party or an attorney constitutes a certificate him that he has read the pleadings, motions, and legal memoranda that to the best of his knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay.

4.11 DEFENSES AND OBJECTIONS - WHEN AND HOW PRESENTED - BY PLEADING OR MOTION - MOTION FOR JUDGMENT ON PLEADINGS

4.11.1 When Presented: A defendant shall serve his answer on or before the time he is required to answer to the summons as indicated in Rule 4.4. A party served with a pleading stating a cross-claim against him shall answer thereto on the return date fixed in a notice which shall accompany the pleading. The plaintiff shall reply to a counterclaim not less than three (3) days prior to trial. If the court denies a motion permitted under this rule or postpones its disposition until the trial on the merits, the court may set the case for trial at the same time and also fix a time for the responsive pleading. If the court grants a motion for more definite statement, the court may set the case for trial at the same time and fix the date for making the more definite statement and for the responsive pleading to the more definite statement.

4.11.2 How Presented: Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third party claim, shall be asserted by the responsive pleading thereto, except that the following defenses may, at the option of the pleader, be made by motion:

1. lack of jurisdiction over the subject matter;
2. lack of jurisdiction over the person;
3. insufficiency of process;
4. insufficiency of service of process;
5. failure to state a claim upon which relief can be granted; and
6. failure to join an indispensable party.

A motion making any of these defenses shall be made before pleading is permitted, except that lack of subject matter jurisdiction can be raised by any party or by the Court at any time. No defense or objection is waived by being joined with one or more defenses or objections in a responsive pleading or motion. If a pleading sets forth in a claim for relief to which the adverse party is not required to serve a responsive pleading, he may assert at the trial any defense at the trial any defense in law or fact to the claim for relief. If, on a motion asserting the defense numbered (5) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 4.49, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 4.49.

4.11.3 Preliminary Hearings: The defenses specifically enumerated (1)-(6) in subdivision 4.11.2 of this rule, whether made in a pleading or by motion, shall be heard and determined before trial on application of any party, unless the court orders that the hearing and determination thereof be deferred until the trial.

4.11.4 Motion for More Definite Statement: If a pleading to which a responsive pleading is permitted

(for example, the complaint) is so vague or ambiguous that a person of common understanding cannot know what us Intended, he may move for a more definite statement before interposing his responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the court is not obeyed within 10 days after the order or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just.

4.11.5 Motion to Strike: Upon motion made by a party not less than three (3) days prior to trial or upon the court's own initiative, at any time the court may order stricken from the complaint any impertinent or scandalous matter.

4.11.6 Consolidation of Defenses: A party who makes a motion under this rule may join with it the other motions herein provided for and then available to him. If a party makes a motion under this rules and does not include therein all defenses and objections then available to him which this rule permits to be raised by motions, he shall not thereafter make a motion based on any of the defenses or objection so omitted, except as provided in subdivisions 4.11.7 of this rule.

4.11.7 Waiver of Defenses: A party waives all defenses and objections which he does not present either by motion as herein before provided, or, if he has made no motion, in his answer or reply, except: (1) that the defense of failure to state a claim upon which relief can be granted, the defense of failure to join an indispensable party, and the objection of failure to state a legal defense to a claim may also be made by a later pleading, if one is permitted, or by motion for judgment on the pleadings or at the trial on the merits; and except (2) that whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action. The objection or defense, if made at the trial, shall be disposed of as provided in Rule 4.15.2 in the light of any evidence that may have been received.

4.12 COUNTERCLAIM AND CROSS-CLAIM

4.12.1 Permissive Counterclaims: A pleading may state as a counterclaim any claim against an opposing party.

4.12.2 Counterclaim Exceeding Opposing Claim: A counterclaim may or may not diminish or defeat the recovery sought by the opposing party. It may claim relief exceeding in amount or different in kind from that sought in the pleading of the opposing party.

4.12.3 Counterclaim Maturing or Acquired After Pleading: A claim which either matured or was acquired by the pleader after serving his pleading may, with the permission of the court, be presented as a counterclaim by supplemental pleading.

4.12.4 Omitted Counterclaim: When a pleader fails to set up a counterclaim through oversight, inadvertence, or excusable neglect, or when justice requires, he may, by leave of court, set up the counterclaim by amendment.

4.12.5 Cross-Claim Against Co-Party: A pleading may state as a cross-claim and claim by one party against a co-party arising out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein or relating to any property that is the subject matter of the

original action. Such cross-claim may include a claim that the against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-complainant.

4.12.6 Additional Parties May Be Brought In: When the presence of parties other then those to the original action is required for the granting of complete relief in the determination of a counterclaim or cross-claim, the court shall order them to be brought in as defendants as provided In these rules, if jurisdiction of them can be obtained.

4.12.7 Separate Trials; Separate Judgment: If the court orders separate trials as provided in Rule 4.30.1, judgment on a counter-claim or cross-claim may be rendered in accordance with the terms of Rule 4.30.1, judgment on a counterclaim or cross-claim may be rendered in accordance with the terms of Rule 4.30.2, even if the claims of the opposing party have been dismissed or otherwise disposed of.

4.13 SETOFFS AGAINST ASSIGNEES

4.13.1 Setoff Against Assignee: The defendant In a civil action upon a contract express or implied other the upon a negotiable promissory note or bill of exchange, negotiated in good faith and without notice before due which has been assigned to the plaintiff, may set off a demand of a like nature existing against the person to whom he was originally liable, or any assignee prior to the plaintiff, of such contract, provided such demand existed at the time of the assignment thereof, and belonging to the defendant in good faith, before notice of such assignment, and was such a demand as might have been set off such assignment, and was such a demand as might have been set off against such person to whom he was originally liable, or such assignee while the contract belonged to him.

4.13.2 Setoff Against Beneficiary of Trust Estate: If the plaintiff be a trustee to any other, or if the action be in a name of a plaintiff which has no real interest in the contract upon which the action is founded, so much of a demand existing against those whom the plaintiff represents or for whose benefit the action is brought, may be set off as will satisfy the plaintiffs debt, if the same might have been set off in an action brought against those beneficially interested.

4.13.3 Setoff Must Be Pleaded: To entitle a defendant to a setoff under this rule, he must set forth the same in his answer.

4.14 THIRD PARTY PRACTICE

4.14.1 When Defendant May Bring in Third Party: Before making his answer, a defendant may move ex parte, or, after answering, on notice to the plaintiff, for leave as a third party plaintiff to serve a summons and complaint upon a person not a party to the action who is or may be liable to him for all or part of the plaintiffs claim against him. If the motion is granted and the summons and complaint are served, the person so served, herein after called the third party defendant, shall make his defense to the third party plaintiffs claim as provided in Rule 4.11 and his counterclaims against the third party plaintiff and cross-claims against other third party defendants as provided in Rule 4.12. The third party defendant may assert against the plaintiff any defenses which the third party plaintiff has to plaintiff's claim. The third party defendant may also assert any claim against the plaintiff arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third party plaintiff. The plaintiff may assert any claim against the third party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiffs claim against the third party plaintiff, and the third party defendant thereupon shall assert his defenses as provided in Rule 4.11. A third party defendant may proceed under this rule against any person not a party to the action who is or may be liable to him for all or part of the claim made in the action against the third party defendant.

4.14.2 When Plaintiff May Bring in Third Party: When a counterclaim is asserted against a plaintiff, he may cause a third party to be brought in under circumstances which under this rule would entitle a defendant to do so.

4.14.3 Tort Cases: This rule shall not be applied, in tort cases, so as to permit the joinder of a liability or indemnity insurance company, unless such company is, by statute or contract, directly liable to the person injured or damaged.

4.15 AMENDED AND SUPPLEMENTAL PLEADINGS.

4.15.1 Amendment Prior to Trial: A party may amend a complaint, counterclaim, cross-claim, or third party complaint once as a matter of course at any time before a responsive pleading Is made, or, if the pleading is an answer or a reply to a counterclaim, he may so amend it at any time within twenty (20) days after it is served, provided It is amended prior to trial. Otherwise, prior to trial, a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within ten (10) days after service or notice of the amendment pleading, whichever period may be the longer, unless the court otherwise orders.

4.15.2 Amendment At or After the Trial: When issue not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure to do so amend does not affect the result of the trial of these issues.

If the evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice him in maintaining his action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence.

4.15.3 Relating Back to Amendment: Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading, the amendment relates back to the date of the original pleading.

4.15.4 Supplemental Pleadings: Upon motion of a party, the court may upon reasonable notice and upon such terms as are just, permit him to serve or make a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented. If the court deems it advisable that the adverse party plead thereto, it shall so order, specifying the time therefore.

4.15.5 Interlineations: No amendments shall be made to any pleading by erasing or adding words to the original on file, except by permission of the court.

4.16 GARNISHMENTS. Garnishments are governed by the revised Code of Washington, chapter 7.33 et seq., which are adopted herein by this reference as though set forth in full; provided, that judges or their clerks may issue writs of garnishment in accordance with the provisions therein.

4.17 PARTIES PLAINTIFF AND DEFENDANT; CAPACITY.

4.17.1 Real Party in Interest: Every action shall be prosecuted in the name of the real party in interest; but an executor, administrator, guardian, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in his own name without joining with him the party for whose benefit the action is brought.

4.17.2 INFANTS OR INCOMPETENT PERSONS.

4.17.2.1 When an Infant is a party he shall appear by guardian, or if he has no guardian, or in the opinion of the court the guardian Is an improper person, the court shall appoint a guardian ad litem. The guardian shall be appointed:

4.17.2.1.1 When the infant is plaintiff, upon the application of the infant, if he be of the age of fourteen (14) years, or it under the age, upon the application of a relative or friend of the infant.

4.17.2.1.2 When the infant is defendant, upon the application of the infant, if he be of the age of fourteen (14) years, and applies within the time he is to appear; if he be under the age of fourteen (14) years, or neglects to apply, then upon the application of any other party to the action, or of a relative or friend of the infant.

4.17.2.2 When an insane person is a party to an action he shall appear by guardian, or if he has no guardian, or in the opinion of the court the guardian Is an improper person, the court shall appoint one to act as guardian ad litem. Said guardian shall be appointed.

4.17.2.2.1 When the insane person is plaintiff, upon the application of a relative or friend of the insane person.

4.17.2.2.2 When the insane person is defendant, upon the application of a relative or friend of such insane person, such application shall be made within the time he is to appear. If no such application be made within the time above limited, application may be made by any party to the action.

4.18 JOINDER OF CLAIMS AND REMEDIES.

4.18.1 Joinder of Claims: The plaintiff, in his complaint or in reply setting forth a counterclaim, and the defendant in an answer setting forth a counterclaim may join either as independent or as alternative claims as many claims, either legal or equitable, or both, as he may have against an opposing party. There may be a like joinder of claims when there are multiple parties if the requirements of Rules 4.19, 4.20, and 4.22 are satisfied. There may be a like joinder of crossclaims or third party claims if the requirements of Rules 4.12 and 4.14 are satisfied. There may be a like joinder or cross-claims or third party claims if the requirements of Rules 4.12 and 4.14, respectively, are satisfied.

4.18.2 Joinder of Remedies: Whenever a claim is one heretofore recognizable only after another claim has been prosecuted to a conclusion, the two claims may be joined in a single action; but the court shall grant relief in that action only in accordance with the relative substantive rights of the parties.

4.19 NECESSARY JOINDER OF PARTIES.

4.19.1 Necessary Joinder: Subject to the provisions of subdivision 4.19.2 of this rule, persons having a joint interest shall be made parties and be joined on the same side as plaintiffs or defendants. When a

person who should join as a plaintiff reuses to do so, he may be made a defendant.

4.19.2 Effective of Failure to Join: When persons who are not indispensable but who ought to be parties if complete relief is to be accordance between those already parties, have not been made parties and are subject to the jurisdiction of the court as to both services of process and venue, the court shall order them summoned to appear in the action. The court, in its discretion, may proceed in the action without making such persons parties, if its jurisdiction over them as to either service of process or venue can be acquired only by their consent or voluntary appearance; but the judgment rendered therein does. not affect the rights or liabilities of absent persons.

4.19.3 Said Names of Omitted Persons and Reasons for Non-joinder to be Pleaded: In any pleading in which relief is asked, the pleader shall set forth the names, if known to him, or persons who ought to be parties if complete relief is to be accorded between those already parties, but who are not joined, and shall state why they are omitted.

4.20 PERMISSIVE JOINDER OF PARTIES.

4.20.1 Permission Joinder: All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences, and if any question of law or fact common to all of them will arise in the action. All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences, and if any questions of law or fact common to all of them will arise in the action. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities.

4.20.2 Separate Trials: The court may make such orders as will prevent a party from being embarrassed, delayed, or put to expense by the inclusion of a party against whom he assets no claim and who asserts no claim against him, and may order separate trials or make other orders to prevent delay or prejudice.

4.21 MISJOINDER AND NONJOINDER OF PARTIES: Misjoinder of parties is not ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just. Any claim against a party may be severed and proceeded with separately.

4.22 INTERPLEADER: Persons having claims against the plaintiff may be joined as defendants and requires to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability. It is not ground for objection to the joinder that the claims of the several claimants or the titles on which their claims depend do not have a common origin or are not identical but are adverse to and independent of one another, or that the plaintiff avers that he is not liable in whole or in part to any or all of the claimants. A defendant exposed to similar liability may obtain such interpleader by way of cross-claim or counterclaim. The provisions of this rule supplement and do not in any way limit the joinder of parties permitted under other rules and statutes.

4.23 INTERVENTION

4.23.1 Intervention of Right: Upon timely application, anyone. shall be permitted to intervene in an action: (1) when a ordinance confers an unconditional right to intervene; or (2) when the representation of

the application interest by existing parties is or may be inadequate and the applicant is or may be bound by a judgment in the action; or (3) when the applicant is so situated as to be adversely affected by a distribution or other disposition of property which is in the custody or subject to the control or disposition of the court.

4.23.2 Permissive Intervention: Upon timely application, anyone may be permitted to intervene in an action: (1) when a ordinance confers a conditional right to intervene: or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. In exercising its discretion, the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

4.23.3 Procedure: A person desiring to intervene shall serve a motion to intervene upon all parses affected thereby. The motion shall state the ground therefore and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought.

4.24 SUBSTITUTION OF PARTIES

4.24.1 Death.

4.24.1.1 If a party dies and the claim is not thereby extinguished, the court may order substitution of the proper parties. The motion for substitution may be the successors or representatives of the deceased party or by any party, and together with the notice of hearing, shall be served on the parties as provided for service of notices, and upon persons not parties in the manner provided by these rules for the service of a summons and complaint. If substitution is not made within a reasonable time, the action may be dismissed as to the deceased party.

4.24.1.2 In event of the death of one or more of the plaintiffs or one or more of the defendants in an action in which the right sought to be enforced survives only to the surviving plaintiffs or only against the surviving defendants, the action does not abate. The fact of death shall be noted in the docket and the action shall proceed in favor of or against the surviving parties.

4.24.2 Incompetency: If a party becomes incompetent, the court, upon motion served as provided in subdivision 4.24.1 of this rule, may allow the action to be continued by or continued by or against his representative.

4.24.3 Transfer of Interest: In case of any transfer of interest, the action may be continued by or against the original party unless the court, upon motion, directs the person to whom the interest is transferred to be substituted in the action or joined with the original party. Service of the motion shall be made as provided in subdivision 4.24.1 of this rule.

4.25 DEPOSITIONS AND INTERROGATORIES PENDING ACTION: The taking of depositions or the requesting of admissions, the propounding of interrogatories and other discovery procedures may be available to a party only upon obtaining prior permission of the court. The court shall have absolute discretion to decide whether to permit any such procedures. In exercising such discretion, the court shall consider (1) whether all parties are represented by counsel; (2) whether delay in bringing the case to trial will result; and (3) whether the interests of justice will be promoted.

4.26 JURY TRIAL

4.26.1 Demand and Selection: After the appearance of the defendant, and before court shall proceed to inquire into the merits of the cause, either party may demand a jury to try the action.

4.27 TRIAL BY JURY OR BY THE COURT

4.27.1 By Jury: In a civil case, when a jury is demanded, it shall be allowed and tried with all reasonable speed. All issues of fact shall be tried by the jury.

4.27.2 By the Court: All questions of law including the admissibility of testimony, the fact preliminary to such admission, and the construction of statutes and other writings, and other rules of evidence, are to be decided by the judge, and all discussions of law addressed to him.

4.28 ASSIGNMENT OF CASES FOR TRIAL - JUDGE, DISQUALIFICATION

4.28.1 Assignment for Trial: When the pleading of the parties have taken place, a case shall be tried, but cases may be continued by the court to a date certain. Continuances may not be granted for a longer period than sixty (60) days each.

4.28.2 Disqualification: In any case pending in any court of limited jurisdiction, unless otherwise provided by law, the judge thereof shall be deemed disqualified to hear and try the case when he is in anyways interested or prejudiced. The judge, of his own initiative, may enter an order disqualifying himself; and he shall also disqualify himself under the provisions of this rule if, before the jury is sworn or the trial is commenced, a party files an affidavit that such party cannot have a fair and impartial trial by reason of the interest of prejudice of the judge or for other ground provided by law. Only one such affidavit shall be filed by the same party in the case and such affidavit shall be made as to only one of the judges of said court.

All rights to an affidavits of prejudice will be considered waived where filed more than ten (10) days after the case is set for trial, unless the affidavit alleges a particular incident, conversation, or utterance by the judge, which was not known to the party or his attorney within the ten (10) day period. In multiple judge courts, or where a pro tern or visiting judge Is designated as the trial judge, the 10-day period shall commence on the date that the defendant or his attorney has actual notice of assignment or reassignment to a designated trial judge.

4.29 DISMISSAL OF ACTIONS

4.29.1 Without Prejudice: Judgment that the action be dismissed, without prejudice to a new action, may be entered, with costs, in the following cases:

4.29.1.1 When the plaintiff voluntarily dismissed the action before it is finally submitted.

4.29.1.2 When plaintiff fails to appear at the time set for trial or other hearing.

4.29.2 Limitation: If a counterclaim has been pleaded by defendant, the action shall not be dismissed against defendant's objection unless the counterclaim can remain pending for independent adjudication by the court.

4.29.3 Counterclaims, etc.: The provisions of this rule apply to the dismissal of any counterclaim, set-off,

cross-claim, or third party claim.

RULE 4.34 CONSOLIDATION; SEPARATE TRIALS

4.30.1 Consolidation: When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial or any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

4.30.2 Separate Trials: The court, in furtherance of convenience or to avoid prejudice, may order a separate trial of any claim, cross-claim, counterclaim, or third part claim, or of any separate issue or of any number or claims, cross-claims, counterclaims, third party claims, or issues.

RULE 4.31 TAKING OF TESTIMONY

4.31.1 Form: In all trials, the testimony of witnesses shall be taken orally in open court, unless otherwise provided by rule or statute.

4.31.2 Multiple Examinations: When two or more attorneys are upon the same side trying a case, the attorney conducting the examination of a witness shall continue until the witness is-excused from the stand; and all objections and offers of proof made during the examination of such witness shall be made or announced by the examination of such witness shall be made or announced by the attorney who is conducting the examination or cross-examination.

4.31.3 Affirmation in Lieu in Oath: Whenever under these rules an oath is required to be taken, a solemn affirmation may be accepted in lieu thereof.

4.31.4 Adverse Party as Witness:

4.31.4.1 Party or Managing Agent as Adverse Witness: A party, or anyone, at the time of the notice, is an officer, director, or other managing agent (herein collectively referred to as "managing agent") of a public or private corporation, partnership or association which is a party to an action or proceeding may be examined at the instance of any adverse party. Attendance of such deponent or witness may be compelled solely by notice (in lieu of subpoena) given to opposing counsel of record. Notices for the attendance of a party or a managing agent at the trial shall be given a reasonable time before the trial of not less than ten (10) days (exclusive of the day of service, Saturdays, Sundays, and court holidays). For good cause shown, the court may make orders for the protection of the party or managing agent to be examined.

4.31.4.2 Effect of Discovery, etc.: A party who has filed interrogatories to be answered by the adverse party or who has taken the deposition of an adverse party or of the managing agent of an adverse party shall not be precluded for that reason from examining such adverse party or managing agent at the trial. The testimony of an adverse party or managing agent at the trial or on deposition or interrogatories shall not bind his adversary but may be rebutted.

4.31.4.3 Refusal to Attend and Testify - Penalties: If a party or managing agent refuses to attend and testify before the officer designated to take his deposition or at the trial after notice served, the complaint, answer, or reply of the party may be stricken and judgment taken against taken against the party, and the contumacious party or managing agent may also be proceeded, against as in other cases of contempt.

This rule shall not be construed:

1. to compel any person to answer any question where such answer any question where such answer might tend to incriminate him; or

2. to prevent a party from using a subpoena to compel the attendance of any party of managing agent to give testimony by deposition or at the trial; or

3. to limit the applicability of any other sanctions or penalties.

4.31.5 Attorneys as Witnesses: If any attorney offers himself as a witness on behalf of him client and gives evidence on the merits, he shall not argue the case to the jury, unless by permission of the court.

4.32 PROOF OF OFFICIAL RECORD

4.32.1 Authentication of Copy: An official record or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied with a certificate that such officer has the custody. If the office in which the record is kept is within the United States or within a territory or insular possession subject to the dominion of the United States, the certificate may be made by a judge of a court of record of the district or political subdivision in which the record is kept, authenticated by the seal of the court, or may be made by any public officer having a seal of office and having official duties in the district or political subdivision in which the record is kept, authenticated by the seal of his office. If the office in which the record is kept is in a foreign state or country, the certificate may be made by a secretary of embassy or legation, consul general, consul, vice-chairman, or consular agent or by any officer in the foreign service of the United States stationed in the foreign state or country in which the record is kept, and authenticated by the seal of his office.

4.32.2 Proof of Lack of Record: A written statement signed by an officer having the custody of an official record or by his deputy that after diligent search no record or entry of a specified tenor is found to exist in the records of his office, accompanied by a certificate as above provided, is admissible as evidence that the records of his office contain no such record or entry.

4.32.3 Other Proof: This rule does not prevent the proof of official records or of entry or lack of entry therein by any method authorized by an applicable statute, or by the rules of evidence at common law.

4.33 SUBPOENA. Subpoenas are governed by Title I, Section 1.9; PROVIDED, that subpoenas may be issued with like effect by the attorney of record of the party to the action in whose behalf the witness is required to appear, and the form of such subpoena in each case shall be the same as when issued by the court except that it shall only be subscribed by the signature of such attorney.

4.34 INSTRUCTIONS TO JURY; OBJECTION. At the close of the evidence, the court, on its own motion, or on the request of either party, shall instruct the jury on the law either orally or in writing, or both. Any party may file written request that the court instruct the jury. At the same time, copies of requested instructions shall be furnished to adverse parties. The court need not grant any requested instruction if the matter is fairly covered by the instruction given. The court shall not instruct with respect to matters of fact or comment upon the evidence.

4.35 FINDINGS BY THE COURT. If a jury trial is not demanded, the judge shall hear the evidence and decide all questions of fact and law, and render judgment accordingly. He is not required to make findings

of fact or conclusions of law.

4.36 JUDGMENTS; COSTS

4.36.1 Definition - Form: "Judgment," as used in these rules, includes a decree and any final order from which an appeal lies. A judgment shall not contain a recital of pleadings or the record of prior proceedings. Judgments may be in a writing signed by the court or may be oral confirmed by an entry in the record.

4.36.2 Judgment Upon Multiple Claims: When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third party claim, the court may direct the entry of a final judgment upon one or more, but less than all, of the claims only upon an express determination that there is no just reason for delay, and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decisions, however designated, which adjudicates less then all the claims, shall not terminate the action as to any of the claims, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims.

4.36.3 Demand for Judgment: A judgment by default shall not be different in kind from or exceed in amount as that prayed for in the demand for judgment.

4.37 DEFAULT

4.37.1 Judgment: When the defendant fails to appear and plead before or at the time specified in the summons, or within one (1) hour thereafter, or upon continuance, or for trial, judgment shall be given or motion of the plaintiff, if the motion includes a statement. of. the basis for venue in the action and it does not clearly appear to the court from the papers on file that venue is improper, as follows: When the defendant has been served with a true copy of the complaint, judgment shall be given upon proof satisfactory to the court. In those cases where interest and attorney fees are claimed by virtue of a written instrument, a copy of said instrument shall be filed and the court shall set a reasonable attorney's fee. The court shall notify the defendant of the entry of a default judgment by mailing a copy of the order and judgment to the defendant at his last known address within five (5) days after entry of the judgment.

4.37.2 Setting Aside Default:

4.37.2.1 For good cause shown and upon such terms as the court deems just, the court may set aside an entry of default. No court shall Issue a transcript or pay out or turn over money or property received by the court by virtue of any default judgment until the expiration of twenty (20) days from entry of the judgment.

4.37.2.2 Nothing herein contained shall limit the power of the court to set aside a judgment, at any time, where the court lacked jurisdiction to enter the judgment.

4.37.3 Plaintiffs, Counter claimants, Cross-Claimants: The provisions of this rule apply whether the party entitled to the judgment by default Is a plaintiff, a third party plaintiff, or a party who has pleaded a cross-claim or counterclaim.

4.38 ENTRY OF JUDGMENT. Upon the verdict of a jury, the court shall immediately render judgment thereon. If the trial is by the judge, judgment shall be entered immediately after the close of the trial, unless he reserves his decision, in which event, the trial shall be continued to a day certain, but not longer then 15 days.

4.38A Enforcement of Certain Judgments of Courts Other than the Tulalip Tribal Court

4.38A.1 Recognition, implementation and enforcement of orders, judgments and / or decrees from courts other than the Tulalip Tribal Court shall be allowed in accordance with this code if it has been registered with the Tulalip Tribal Court by filing a certified copy of the order, judgment and / or decree with the Tribal Court Clerk, paying any necessary filing fee established by the Clerk, and obtaining service on the judgment debtor or nonprevailing party in accordance with the provisions of this code.

4.38A.2 Any party to such a foreign order, judgment and / or decree registered with the Tribal Court may, within thirty (30) days of the service of such order, judgment and / or decree upon the other party, apply for hearing on the order, judgment and / or decree before the Tribal Court. Upon such application, the Tribal Court shall hold a hearing to determine the validity of such order, judgment and / or decree and shall consider issues raising by the other party including, but not limited to, the jurisdiction of the foreign court and whether such order, judgment and / or decree is contrary to laws, both written and customary, of the Tulalip Tribes of Washington.

4.38A.3 The provisions of this Section 4.38A shall not be construed to waive the immunity of the Tulalip Tribes, its Board of Directors, its agencies, enterprises, chartered organizations, corporations, or entities of any kind, and its officers, employees, agents, contractors and attorneys, in the performance of their duties, shall be immune from suit; except where the immunity of the Tribes or its officers and employees is expressly, specifically and unequivocally waived by and in a Tulalip tribal or federal statute, a duly-executed contract approved by the Tulalip Board of Directors, or a duly enacted ordinance or resolution of the Tulalip Board of Directors.

4.38A.4 Enforcement of foreign orders, judgments and / or decrees when so ordered by the Tulalip Tribal Court shall only be permitted using enforcement and execution processes of this code.

4.39 RELIEF FROM JUDGMENT OR ORDER

4.39.1 Clerical Mistakes: Clerical mistakes in judgments, orders, or other parts of the record and errors therein arising from oversight of omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders.

4.39.2 Mistakes, Inadvertence, Excusable Neglect, Newly Discovered Evidence, Fraud, etc.: On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:

4.39.2.1 Mistakes, inadvertence, surprise, excusable neglect or irregularity in obtaining a judgment or order.

4.39.2.2 For erroneous proceedings against a minor or person of unsound mind, when the condition of such defendant does not appear in the record, not the error in the proceedings.

4.39.2.3 Venue is improper and the judgment or order has been entered by default.

4.39.2.4 Fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party.

4.39.2.5 The judgment is void.

4.39.2.6 The judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated.

4.39.2.7 If the defendant was served by publication relief may be granted as prescribed in RCW 4.48.200; which are adopted herein by this reference as though set forth in full.

4.39.2.8 Death of one the parties before the judgment in the action.

4.39.2.9 Unavoidable casualty or misfortune preventing the party from prosecuting or defending.

4.39.2.10 Error in judgment shown by a minor, within 12 months after arriving at full age.

4.39.2.11 Any other reason justifying relief from the operation of the judgment.

4.39.3 Motion: The motion shall be made within a reasonable time, and for reasons (1), (2), or (3) of section 4.39.2 not more than one (1) year after the judgment, order, or proceeding was entered or taken. If the party entitled to relief is a minor or a person of unsound mind, the motion shall be made within one (1) year after the disability ceases. A motion under section 4.39.2 does not after the disability cease. A motion under section 4.39.2 does not affect the finality of the judgment or suspend its operation.

4.40 STAY OF PROCEEDING TO ENFORCE A JUDGMENT. When the court has ordered a final judgment on some but not all the claims presented in the action, under the conditions stated in Rule 4.36.2, the court may stay enforcement of the judgment until the entering of a subsequent judgment of judgments and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered.

4.41 GARNISHMENT. [RESERVED]

4.42 OFFER OF JUDGMENT. At any time more than five (5) days before trial begins, a party defending against a claim may serve upon the adverse party an offer to allow judgment to be taken against him from the money or property or the effect specified in his offer, with costs then accrued. If within five (5) days after the service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance, together with proof of service thereof, and thereupon the court shall enter judgment. An offer not accepted shall be deemed withdrawn and evidence thereof is not admissible except in a proceeding to determine costs. If the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the cost incurred after the making of the offer. The fact that an offer is made but not accepted does not preclude a subsequent offer.

4.43 APPEAL TO APPELLATE COURT

4.43.1 When and How Taken: An appeal shall be taken by serving a copy of notice of appeal on the adverse party or his attorney, and filing, within twenty (20) days after the judgment is rendered or decision made, the original notice of appeal with acknowledgment or affidavit of service in the trial court, and, unless such appeal be the Tulalip Tribes of Washington, filing a bond or undertaking, as herein provided. No appeal, except when such appeal is by the Tulalip Tribes of Washington, shall be allowed in any case unless a bond or undertaking shall be executed on the part of the appellant and filed with and approved by

the court of limited jurisdiction with one or more sureties, in the sum of ONE HUNDRED DOLLARS ($100), conditioned that the appellant will pay all costs that may be awarded against him on appeal; or if a stay or proceedings in the trial court be claimed, except by the Tulalip Tribes of Washington, a bond or undertaking with two or more personal sureties, or a surety company as surety, to be approved by the trial court, in a sum equal to twice the amount of the judgment and costs, conditioned that the appellant will pay such judgment, including costs, as may be rendered against him on appeal, be so executed and filed.

4.43.2 Stay of Proceedings: Upon appeal being taken and a bong filed to stay all proceedings, the trial court shall allow the same and make an entry of such allowance and all further proceedings on the judgment in such court shall thereupon be suspended; and, if in the meantime, execution shall have been issued, such court shall give the appellant a certificate that such appeal has been allowed.

4.43.3 Release of Property Taken on Execution: On such certificate being presented to the officer holding the execution, he shall forthwith release the property of the judgment debtor that may have been taken on execution.

4.43.4 No Dismissal for Defective Bond: No appeal from a court shall be dismissed on account of any defect in the bond on appeal, if the appellant, before the motion is determined, shall execute and file in the Appellate Court such bond as he should have executed at the time of taking the appeal, and pay all costs that may have accrued by reason of such defect.

4.43.5 Judgment Against Appellant and Sureties: In all cases of appeal, if on the trial anew in such court, the judgment be against the appellant in whole or in part, such judgment shall be rendered against him and his sureties on the bond on appeal.

4.44 RECORD ON APPEAL TO APPELLATE COURT.

4.44.1 Transcript; Procedure in Appellate Court; Pleadings in Appellate Court: Within ten (10) days after the appeal has been taken in a civil action or proceeding, the appellant shall file with the clerk of the Appellate Court a transcript of all entries made in the docket of the trial court relating to the case, together with all the process and other papers relating to the case filed in the trial court which shall be made and certified by such other to be correct upon the payment of the fees allowed by law therefore, and upon the filing of such transcript and Appellate Court shall become possessed of the cause, and shall proceed in the same manner, as near as may be, as in actions originally commenced in that court, except as provided in these rules. The issue before the trial court shall be tried in the Appellate Court without other or new pleadings, unless otherwise directed by the Appellate Court.

4.44.2 [RESERVED]

4.44.3 [RESERVED]

4.44.4 Transcript; Procedure on Failure to Make and Certify; Amendment: If, upon an appeal being taken, the trial court fails, neglects, or refuses, upon the tender or payment of the fees allowed by law, to make and certify the transcript, the appellant may make application, supported by affidavit, to the Appellate Court and the court shall issue an order directing the trial court to make and certify such transcript upon the payment of such fees. Whenever it appears to the satisfaction of the Appellate Court that the return of the trial court to such order is substantially erroneous or defective, it may order the trial court to amend the same. If the judge of the trial court fails, neglects, or refuses to comply with any order issued under the provisions of this section, he may be cited and punished for contempt of court.

4.45 ADMINISTRATION OF OATH. The oaths or affirmations of all witnesses:

4.45.1 Shall be administered by the judge;

4.45.2 Shall be administered to each witness on coming to the stand, not to a group and in advance; and

4.45.3 The witness shall stand while the oath or affirmation is pronounced.

4.46 JURISDICTION AND VENUE – JURISDICTION AND VENUE SHALL BE THAT AS SET FORTH IN TITLE I, SECTION 1.2.

4.47 TITLE. These rules may be known and cited as Civil Rules for Courts of Limited Jurisdiction may they may be referred to as Civil Rules of Tribal Court.

4.48 EFFECTIVE DATE [RESERVED]

4.49 SUMMARY JUDGMENT

4.49.1 For Claimant: A party seeking to recover upon a claim, counterclaim, or cross-claim may, at any time after the expiration of the period within which the defendant is required to appear, or after service of a motion for summary judgment by the adverse party, in his favor upon all or any part thereof.

4.49.2 For Defending Party: A party against whom a claim, counterclaim, or cross-claim is asserted may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof.

4.49.3 Motion and Proceedings: The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone, although there is no genuine issue as to the amount of damages.

4.49.4 Case Not Fully Adjudicated on Motion: If on motion under the rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court, at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall, if practicable, ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not controversy, and directing such further proceedings in the action as are just. Upon the trial of the action, the fact so specified shall be deemed established, and the trial shall be conducted accordingly.\

4.49.5 Form of Affidavits; Further Testimony; Defense Required: Supporting and opposing affidavit shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as

provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

4.49.6 When Affidavits are Unavailable: Should it appear from the affidavits of a party opposing the motion that he cannot, for reasons stated, present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or deposition to be taken or discovery to be had or may make such other order as is just.

4.49.7 Affidavits Made in Bad Faith: Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused him to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

4.50. [RESERVED].

4.51 ARBITRATION

4.51.1 Arbitration Authorized. Two or more parties may agree in writing to submit to arbitration, in conformity with the provisions of this section, any controversy which may be the subject of an action existing between them at the time of the agreement to submit, or they may include in a written agreement a provision to settle by arbitration any controversy thereafter arising between them out of or in relation to such agreement. Such agreement shall be valid, enforceable and irrevocable save upon such grounds as exist in law or equity for the revocation of any agreement.

4.51.2 Application in Writing — How Heard — Jurisdiction. Any application made under authority of this section shall be made in writing and heard in a summary way in the manner and upon the notice provided by law or rules of court for the making and hearing of motions or petitions, except as otherwise herein expressly provided. Jurisdiction under this section is specifically conferred on the Tulalip Tribal Court, subject to jurisdictional limitations.

4.51.3 Stay of Action Pending Arbitration. If any action for legal or equitable relief or other proceedings be brought by any party to a written agreement to arbitrate, the court in which such action or proceeding is pending, upon being satisfied that any issue involved in such action or proceeding is referable to arbitration under such agreement, shall, on motion of any party to the arbitration agreement, stay the action or proceeding until an arbitration has been had been had in accordance with agreement.

4.51.4 Motion to Compel Arbitration — Notice and Hearing — Motion for Stay.

1. A party to written agreement for arbitration claiming the neglect or refusal of another to proceed with an arbitration thereunder may make application to the court for an order directing the parties to proceed with the arbitration in accordance with their agreement. Eight days notice in writing of such application shall be served upon the party alleged to be in default. Service thereof shall be made in the manner provided by law for service of a summons or notice in a civil action in the court specified in Section 4.51.2. If the court is satisfied after hearing the parties that no substantial issue exists as to the existence or validity of the agreement to arbitrate or the failure to comply therewith, the court shall make an order directing the parties to proceed to arbitrate in

accordance with the terms of the agreement.

2. If the court shall find that a substantial issue is raised as to the existence or validity of the arbitration agreement or the failure to comply therewith, the court shall proceed immediately to the tribal of such issue. If upon such trial the court finds that no written agreement providing for arbitration was made or that there is no default in proceeding thereunder, the motion to compel arbitration shall be denied.

3. In order to raise an issue as to the existence or validity of the arbitration agreement or the failure to comply therewith, a party must set forth evidentiary facts raising such issue and must either (a) make a motion for a stay of the arbitration. If a notice of intention to arbitrate has been served as provided in Section 4.51.6, notice of the motion for the stay must be served with (20) twenty days after service of said notice. Any issue regarding the validity or existence of agreement or failure to comply therewith shall be tried in the same manner as provided in subsection (2) hereunder; or (b) by contesting a motion to compel arbitration as provided under subsection (1) of this section.

4.51.5 Appointment of Arbitrators by Court. Upon the application of any party to the arbitration agreement, and upon notice to the other parties thereto, the court shall appoint an arbitrator, or arbitrators, in any of the following cases:

1. When the arbitration agreement does not prescribe a method for the appointment of arbitrators.

2. When the arbitration agreement does not prescribe a method for the appointment of arbitrators, and the arbitrators, or any of them, have not been appointed and the time within which they should have been appointed has expired.

3. When any arbitrator fails or is otherwise unable to act, and his successor has not been duly appointed.

4. In any of the foregoing cases where the arbitration agreement is silent as to the number of arbitrators, three arbitrators shall be appointed by the court.

   Arbitrators appointed by the court shall have the same power as though their appointment had been made in accordance with the agreement to arbitrate.

4.51.6 Notice of Intention to Arbitrate — Contents. When the controversy arises from a written agreement containing a provision to settle by arbitration a controversy thereafter arising between the parties out of or in relation to such agreement, the party demanding arbitration shall serve upon the other party, personally or by registered mail, a written notice of his intention to arbitrate. Such notice must state in substance that unless within (20) twenty days after its service, the party served therewith shall service a notice of motion to stay the arbitration, he shall thereafter be barred from putting in issue the existence or thereafter be barred from putting in issue the existence or validity of the agreement or the failure to comply therewith.

4.51.7 Hearing by Arbitrators. The arbitrators shall appoint a time and place for the hearing and notify the parties thereof, and may adjourn the hearing from time to time as may be necessary, and, on application of either party, and for good cause, may postpone the hearing to a time not extending beyond the date fixed for making the award. All arbitrators shall meet and act together during the hearing but a majority of them may determine any question and render a final award. The court shall have power to direct the arbitrators to proceed promptly with the hearing and determination of controversy.

4.51.8 Failure of Party to Appear No Bar to Hearing and Determination. If any party neglects to appear before the arbitrators after reasonable notice of the time and place of hearing, the arbitrators may nevertheless proceed to hear and determine the controversy upon the evidence which is produced before

them.

4.51.9 Time of Making Award — Extension — Failure to Make Award When Required. If the time within which the award shall be made is not fixed in the arbitration agreement, the award shall be made within thirty days from the closing of the proceeding, unless the parties, in writing, extend the time in which that award may be made. If the arbitrator fails to make an award when required, the court, upon motion and hearing, shall order the arbitrator to enter an award within the time fixed by the court, and may impose sanctions or terms deemed reasonable by the court. Failure to make an award within the time required shall not divest the arbitrators of jurisdiction to make an award or to correct or modify an award as provided in 4..51.17.1.

4.51.10 Representation by Attorney. Any party shall have the right to be represented by an attorney at law in any arbitration proceeding or any hearing before the arbitrators.

4.51.11 Witnesses - Compelling Attendance. The arbitrators, or a majority of them, may require any person to attend as a witness, and to bring with him any book, record, document or other evidence. The fees for such attendance shall be the same as the fees of witnesses in the Tribal court. Each arbitrator shall have the power to administer oaths. Subpoena shall issue and be signed by the arbitrators, or any one of them, and shall be directed to the person and shall be served in the same manner as subpoena to testify before a court of record in this state. If any person so summoned to testify shall refuse or neglect to obey such subpoena, upon petition unauthorized by the arbitrators or a majority of them, the court may compel the attendance of such person before the said arbitrator or arbitrators, or punish said person for contempt in the same manner now provided for the attendance of witnesses or the punishment of them in Tribal court.

4.51.12 Depositions. Depositions may be taken with or without a commission in the same manner and upon the same grounds as provided by law for the taking of depositions in suits pending in Tribal court.

4.51.13 Order to Preserve Property or Secure Satisfaction of Award. At any time before final determination of the arbitration the court may upon application of a party to the agreement to arbitrate make such order or decree or take such proceeding as it may be deemed necessary for the preservation of the property or for securing satisfaction of the award.

4.51.14 Form of Award — Copies to Parties. The award shall be in writing and signed by the arbitrators or by a majority of them. The arbitrators shall promptly upon its rendition deliver a true copy of the award to each of the parties or their attorneys.

4.51.15 Confirmation of Award by Court. At any time within one year after the award is made, unless the parties shall extend the time in writing, any party to the arbitration may apply to the court for an order confirming the award, and the court shall grant such an order unless the award is beyond the jurisdiction of the court or is vacated, modified, or corrected, as provided in Section 4.51.16 and Section 4.51.17. Notice in writing of the motion must be served upon the adverse party, or his attorney, five days before the hearing thereof. The validity of an award, otherwise valid, shall not be affected by the fact that no motion is made to confirm it.

4.51.16 Vacation of Award — Rehearing. In any of the following cases the court shall after notice and hearing make an order vacating the award, upon the application of any party to the arbitration:

1. Where the award was procured by corruption, fraud or other undue means.
2. Where there was evident partiality or corruption in the arbitrators or any of them.
3. Where the arbitrators were guilty of misconduct, in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence, pertinent and material to the controversy; or of any other misbehavior, by which the rights of any party have been prejudiced.
4. Where the arbitrators exceeded their powers, or so imperfectly executed them that a final and definite award upon the subject matter submitted was not made.
5. If there was no valid submission or arbitration agreement and the proceeding was instituted without either serving a notice of intention to arbitrate, as provided in Section 4.51.6, or without serving a motion to compel arbitration, as provided in Section 4.51.4(1).

An award shall not be vacated upon any of the grounds set forth under subdivisions (1) to (4), inclusive, unless the court is satisfied that substantial rights of the parties where prejudiced thereby.

Where an award is vacated , the court may, in its discretion, direct a rehearing either before the same arbitrators or before new arbitrators to be chosen in the manner provided in the agreement for the selection of the original arbitrators and any provision limiting the time in which the arbitrators may make a decision shall be deemed applicable to the new arbitration and to commence from the date of the court's order.

4.51.17 Modification or Correction of Award by Court. In any of the following cases, the court shall, after notice and hearing, make an order modifying or correcting the award, upon the application of any party to the arbitration:

1. Where there was an evident miscalculation of figures, or an evident mistake in the description of any person, thing or property, referred to in the award.
2. Where the arbitrators have awarded upon a matter not submitted to them.
3. Where the award is imperfect in a matter of form, not affecting the merits of the controversy. The order must modify and correct the award, as to effect the intent thereof.

4.51.17.1 Modification or Correction of Award by Arbitrators. On application of a party or, if an application to the court is pending under Section 4.51.15, 4.51.16 or 4.51.17, on submission to the arbitrators by the court under such conditions as the court may order, the arbitrators may modify or correct the award upon the grounds stated in Section 4.51.17(1) and (3). The application shall be made, in writing, within ten days after delivery of the award to the applicant. Written notice thereof shall be given forthwith to the opposing party, stating that objections, if any, must be served within ten days from the notice. The arbitrators shall rule on the application within twenty days after such application is made. Any award so modified or corrected is subject to the provisions of Sections 4.51.15, 4.51.16 and 4.51.17 and is to be considered the award in the case for purposes of this section, said award being effective on the date the corrections or modifications are made. If corrections or modifications are denied, then the award shall be effective as of the date the award was originally made.

4.51.18 Notice of Motion to Vacate, Modify, or Correct Award — Stay. Notice of a motion to vacate, modify or correct an award shall be served upon the adverse party, or his attorney, within three months after a copy of the award is delivered to the party or his attorney. Such motion shall be made in the manner prescribed by law for the service of notice of a motion in an action. For the purposes of the motion any judge who might make an order to stay the proceedings, in an action brought in the same court, may make an order to be served with the notice of motion, staying the proceedings of the adverse party to enforce the award.

4.51.19 Judgment — Costs. Upon granting of an order, confirming, modifying, correcting or vacating an award, judgment or decree shall be entered in conformity therewith. Costs of the application and of the proceedings subsequent thereto, not exceeding one hundred dollars and disbursements, may be awarded by the court in its discretion.

4.51.20 Judgment Roll — Docketing. Immediately after entering judgment, the clerk must attach together and file the following papers, which constitute the judgment roll.

1. The agreement; the selection or appointment, if any, of an additional arbitrator, or umpire; and each written extension of the time, if any, within which to make the award.
2. The award.
3. Each notice, affidavit or other paper used upon an application to confirm, modify or correct the award, and a copy of each order of the court upon such an application.
4. A copy of the judgment.

The judgment may be docketed as if it were rendered in action.

4.51.21 Effect of Judgment. The judgment so entered has the same force and effect, in all respects as, and is subject to all the provisions of law relating to, a judgment in an action; and it may be enforced as if it had been rendered in an action in the court in which it is entered.

4.51.22 Appeal. An appeal may be taken from any final order made in a proceeding under this section, or from a judgment entered upon an award, as from an order or judgment in any civil action.

Legislative History

Adopted by Laws of July 17, 1981
Amended by Laws of September 7, 1985
Amended by Tulalip Reso. #88-0079, Laws of June 4, 1988
Amended by Tulalip Reso. #88-0122, Laws of September 10, 1988
Amended by Tulalip Reso. #95-0032, February 9, 1995
Amended by Tulalip Reso. #95-0116, Laws of July 18, 1995
Amended by Tulalip Reso. #96-0039, Laws of April 9, 1996

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Amended by Tulalip Reso. #002046, Laws of February 1, 2002 (as re-adopted & amended)
Amended by Tulalip Reso. #002060, Laws of February 15, 2002
Amended by Tulalip Reso. #002081, Laws of March 2, 2002
Amended by Tulalip Reso. #002334, Laws of July 15, 2002
Amended by Tulalip Reso. #002301, Laws of September 26, 2002
Amended by Tulalip Reso. #002349, Laws of October 5, 2002
Amended by Tulalip Reso. #002400, Laws of December 6, 2002
Amended by Tulalip Reso. #003046, Laws of January 31, 2003
Amended by Tulalip Reso. #003229, Laws of June 11, 2003
Amended by Tulalip Reso. #04-206, Laws of July 8, 2004
Amended by Tulalip Reso. #04-263, Laws of September 10, 2004
Amended by Tulalip Reso. #04-447, Law of November 17, 2004
Amended by Tulalip Reso. #05-107, Laws of March 5, 2005
Amended by Tulalip Reso. #05-123, Laws of April 1, 2005
Amended by Tulalip Reso. #05-256, Laws of July 8, 2005

Related Laws

Laws of July 20, 1938 (Law & Order)